



February 25, 2005

## HOUSE BILL No. 1536

DIGEST OF HB 1536 (Updated February 10, 2005 10:21 am - DI 96)

**Citations Affected:** IC 22-3; IC 27-1; noncode.

**Synopsis:** Workers' compensation. Requires the worker's compensation board (board) to amend its schedule of attorney's fees for worker's compensation and occupational disease claims filed after September 1, 2005. Removes "any other good reason" as a reason that the board may require an employer to pay for physician and medical expenses not provided by the employer. Provides that the burden of proof to show that personal injury or death by accident or disablement or death by occupational disease is on the employee, and that proof by the employee does not create a presumption in favor of the employee with regard to another element of the claim. Provides for increases in the average weekly wage used to calculate worker's compensation and occupational disease benefits. Provides that an insurance company is not authorized to do business in Indiana if: (1) voting control or ownership is held in whole or in substantial part by; or (2) the company is operated by or for; a government, a governmental agency, or an entity having a tax exemption under Section 501(c)(27)(B) or 115 of the Internal Revenue Code. Increases the maximum worker's compensation and occupational disease burial expense allowance from \$6,000 to \$7,500. Provides for assessment of all employers for the liabilities of the second injury fund. Provides that the board shall not make a modified award of worker's compensation and occupational disease benefits later than two years after certain dates.

**Effective:** July 1, 2005.

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January 18, 2005, read first time and referred to Committee on Employment and Labor.  
February 24, 2005, amended, reported — Do Pass; Roll Call 190: yeas 46, nays 38.

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February 25, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

## HOUSE BILL No. 1536

A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 22-3-1-4 IS ADDED TO THE INDIANA CODE  
2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2005]: Sec. 4. (a) As used in this section, "attorney's fees" means  
4 the fees requested for compensation for service provided by an  
5 attorney to a claimant under the worker's compensation law and  
6 the worker's occupational diseases law as provided under section  
7 3(b)(3) of this chapter.

8 (b) As used in this section, "board" refers to the worker's  
9 compensation board of Indiana established under section 1 of this  
10 chapter.

11 (c) As used in this section, "claim" refers to a claim for  
12 compensation under IC 22-3-2 through IC 22-3-7 filed with the  
13 board.

14 (d) The board shall adopt rules under IC 4-22-2 to amend its  
15 schedule of attorney's fees applicable to all claims filed on or after  
16 September 1, 2005, except as provided in subsection (e), to reflect  
17 the following attorney's fees:

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(1) A minimum of one hundred dollars (\$100).

(2) Twenty percent (20%) of the first ten thousand dollars (\$10,000) of recovery.

(3) Fifteen percent (15%) of the second ten thousand dollars (\$10,000) of recovery.

(4) Ten percent (10%) of recovery over twenty thousand dollars (\$20,000).

(e) The board maintains continuing jurisdiction over all attorney's fees in claims before the board and may order a different attorney's fee schedule or allowance for a claim.

SECTION 2. IC 22-3-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) Every employer and every employee, except as stated in IC 22-3-2 through IC 22-3-6, shall comply with the provisions of IC 22-3-2 through IC 22-3-6 respectively to pay and accept compensation for personal injury or death by accident arising out of and in the course of the employment, and shall be bound thereby. **The burden of proof is on the employee. The proof by the employee of an element of a claim based on personal injury or death by accident does not create a presumption in favor of the employee with regard to another element of the claim.**

(b) IC 22-3-2 through IC 22-3-6 does not apply to railroad employees engaged in train service as:

(1) engineers;

(2) firemen;

(3) conductors;

(4) brakemen;

(5) flagmen;

(6) baggagemen; or

(7) foremen in charge of yard engines and helpers assigned thereto.

(c) IC 22-3-2 through IC 22-3-6 does not apply to employees of municipal corporations in Indiana who are members of:

(1) the fire department or police department of any such municipality; and

(2) a firefighters' pension fund or of a police officers' pension fund.

However, if the common council elects to purchase and procure worker's compensation insurance to insure ~~said~~ employees with respect to medical benefits under IC 22-3-2 through IC 22-3-6, the medical provisions of IC 22-3-2 through IC 22-3-6 apply to members of the fire department or police department of ~~any such~~ a municipal corporation who are also members of a firefighters' pension fund or a police

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1 officers' pension fund.

2 (d) When any municipal corporation purchases or procures worker's  
3 compensation insurance covering members of the fire department or  
4 police department who are also members of a firefighters' pension fund  
5 or a police officers' pension fund, and pays the premium or premiums  
6 for such insurance, the payment of such premiums is a legal and  
7 allowable expenditure of funds of any municipal corporation.

8 (e) Except as provided in subsection (f), where the common council  
9 has procured worker's compensation insurance under this section, ~~any~~  
10 ~~a member of such the~~ fire department or police department employed  
11 in the city carrying such worker's compensation insurance under this  
12 section is limited to recovery of medical and surgical care, medicines,  
13 laboratory, curative and palliative agents and means, x-ray, diagnostic  
14 and therapeutic services to the extent that ~~such the~~ services are  
15 provided for in the worker's compensation policy procured by ~~such the~~  
16 city, and shall not also recover in addition to that policy for ~~such the~~  
17 same benefits provided in IC 36-8-4.

18 (f) If the medical benefits provided under a worker's compensation  
19 policy procured by the common council terminate for any reason before  
20 the police officer or firefighter is fully recovered, the common council  
21 shall provide medical benefits that are necessary until the police officer  
22 or firefighter is no longer in need of medical care.

23 (g) The provisions of IC 22-3-2 through IC 22-3-6 apply to:

- 24 (1) members of the Indiana general assembly; and
- 25 (2) field examiners of the state board of accounts.

26 SECTION 3. IC 22-3-3-4 IS AMENDED TO READ AS FOLLOWS  
27 [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) After an injury and prior to  
28 an adjudication of permanent impairment, the employer shall furnish  
29 or cause to be furnished, free of charge to the employee, an attending  
30 physician for the treatment of ~~his the~~ **employee's** injuries, and in  
31 addition thereto such surgical, hospital and nursing services and  
32 supplies as the attending physician or the worker's compensation board  
33 may deem necessary. If the employee is requested or required by the  
34 employer to submit to treatment outside the county of employment, the  
35 employer shall also pay the reasonable expense of travel, food, and  
36 lodging necessary during the travel, but not to exceed the amount paid  
37 at the time of the travel by the state to its employees under the state  
38 travel policies and procedures established by the **Indiana** department  
39 of administration and approved by the ~~state~~ budget agency. If the  
40 treatment or travel to or from the place of treatment causes a loss of  
41 working time to the employee, the employer shall reimburse the  
42 employee for the loss of wages using the basis of the employee's

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1 average daily wage.

2 (b) During the period of temporary total disability resulting from the  
3 injury, the employer shall furnish the physician services and supplies,  
4 and the worker's compensation board may, on proper application of  
5 either party, require that treatment by the physician and services and  
6 supplies be furnished by or on behalf of the employer as the worker's  
7 compensation board may deem reasonably necessary.

8 (c) After an employee's injury has been adjudicated by agreement  
9 or award on the basis of permanent partial impairment and within the  
10 statutory period for review in such case as provided in section 27 of  
11 this chapter, the employer may continue to furnish a physician or  
12 surgeon and other medical services and supplies, and the worker's  
13 compensation board may within the statutory period for review as  
14 provided in section 27 of this chapter, on a proper application of either  
15 party, require that treatment by that physician and other medical  
16 services and supplies be furnished by and on behalf of the employer as  
17 the worker's compensation board may deem necessary to limit or  
18 reduce the amount and extent of the employee's impairment. The  
19 refusal of the employee to accept such services and supplies, when  
20 provided by or on behalf of the employer, shall bar the employee from  
21 all compensation otherwise payable during the period of the refusal,  
22 and ~~his~~ **the employee's** right to prosecute any proceeding under  
23 IC 22-3-2 through IC 22-3-6 shall be suspended and abated until the  
24 employee's refusal ceases. The employee must be served with a notice  
25 setting forth the consequences of the refusal under this section. The  
26 notice must be in a form prescribed by the worker's compensation  
27 board. No compensation for permanent total impairment, permanent  
28 partial impairment, permanent disfigurement, or death shall be paid or  
29 payable for that part or portion of the impairment, disfigurement, or  
30 death which is the result of the failure of the employee to accept the  
31 treatment, services, and supplies required under this section. However,  
32 an employer may at any time permit an employee to have treatment for  
33 ~~his~~ **the employee's** injuries by spiritual means or prayer in lieu of the  
34 physician or surgeon and other medical services and supplies required  
35 under this section.

36 (d) If, because of an emergency, or because of the employer's failure  
37 to provide an attending physician or surgical, hospital, or nursing  
38 services and supplies, or treatment by spiritual means or prayer, as  
39 required by this section, ~~or because of any other good reason,~~ a  
40 physician other than that provided by the employer treats the injured  
41 employee during the period of the employee's temporary total  
42 disability, or necessary and proper surgical, hospital, or nursing

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1 services and supplies are procured within the period, the reasonable  
2 cost of those services and supplies shall, subject to the approval of the  
3 worker's compensation board, be paid by the employer.

4 (e) Regardless of when it occurs, where a compensable injury  
5 results in the amputation of a body part, the enucleation of an eye, or  
6 the loss of natural teeth, the employer shall furnish an appropriate  
7 artificial member, braces, and prosthodontics. The cost of repairs to or  
8 replacements for the artificial members, braces, or prosthodontics that  
9 result from a compensable injury pursuant to a prior award and are  
10 required due to either medical necessity or normal wear and tear,  
11 determined according to the employee's individual use, but not abuse,  
12 of the artificial member, braces, or prosthodontics, shall be paid from  
13 the second injury fund upon order or award of the worker's  
14 compensation board. The employee is not required to meet any other  
15 requirement for admission to the second injury fund.

16 (f) If an accident arising out of and in the course of employment  
17 after June 30, 1997, results in the loss of or damage to an artificial  
18 member, a brace, an implant, eyeglasses, prosthodontics, or other  
19 medically prescribed device, the employer shall repair the artificial  
20 member, brace, implant, eyeglasses, prosthodontics, or other medically  
21 prescribed device or furnish an identical or a reasonably equivalent  
22 replacement.

23 (g) This section may not be construed to prohibit an agreement  
24 between an employer and the employer's employees that has the  
25 approval of the board and that binds the parties to:

- 26 (1) medical care furnished by health care providers selected by
- 27 agreement before or after injury; or
- 28 (2) the findings of a health care provider who was chosen by
- 29 agreement.

30 SECTION 4. IC 22-3-3-10 IS AMENDED TO READ AS  
31 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 10. (a) ~~With respect to~~  
32 ~~injuries in the following schedule occurring prior to April 1, 1951, the~~  
33 ~~employee shall receive in addition to temporary total disability benefits~~  
34 ~~not exceeding twenty-six (26) weeks on account of the injuries; a~~  
35 ~~weekly compensation of fifty-five percent (55%) of the employee's~~  
36 ~~average weekly wages. With respect to injuries in the following~~  
37 ~~schedule occurring on and after April 1, 1951, and prior to July 1,~~  
38 ~~1971, the employee shall receive in addition to temporary total~~  
39 ~~disability benefits not exceeding twenty-six (26) weeks on account of~~  
40 ~~the injuries; a weekly compensation of sixty percent (60%) of the~~  
41 ~~employee's average weekly wages. With respect to injuries in the~~  
42 ~~following schedule occurring on and after July 1, 1971, and before July~~

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1     1, 1977, the employee shall receive in addition to temporary total  
 2     disability benefits not exceeding twenty-six (26) weeks on account of  
 3     the injuries; a weekly compensation of sixty percent (60%) of the  
 4     employee's average weekly wages not to exceed one hundred dollars  
 5     (\$100) average weekly wages; for the periods stated for the injuries.  
 6     With respect to injuries in the following schedule occurring on and  
 7     after July 1, 1977, and before July 1, 1979, the employee shall receive,  
 8     in addition to temporary total disability benefits not exceeding  
 9     twenty-six (26) weeks on account of the injury, a weekly compensation  
 10    of sixty percent (60%) of his average weekly wages, not to exceed one  
 11    hundred twenty-five dollars (\$125) average weekly wages; for the  
 12    period stated for the injury. With respect to injuries in the following  
 13    schedule **set forth in subsection (d)** occurring on and after July 1,  
 14    1979, and before July 1, 1988, the employee shall receive, in addition  
 15    to temporary total disability benefits not to exceed fifty-two (52) weeks  
 16    on account of the injury, a weekly compensation of sixty percent (60%)  
 17    of the employee's average weekly wages, not to exceed one hundred  
 18    twenty-five dollars (\$125) average weekly wages, for the period stated  
 19    for the injury.

20       **(b)** With respect to injuries in the ~~following~~ schedule **set forth in**  
 21    **subsection (d)** occurring on and after July 1, 1988, and before July 1,  
 22    1989, the employee shall receive, in addition to temporary total  
 23    disability benefits not exceeding seventy-eight (78) weeks on account  
 24    of the injury, a weekly compensation of sixty percent (60%) of the  
 25    employee's average weekly wages, not to exceed one hundred sixty-six  
 26    dollars (\$166) average weekly wages, for the period stated for the  
 27    injury.

28       **(c)** With respect to injuries in the ~~following~~ schedule **set forth in**  
 29    **subsection (d)** occurring on and after July 1, 1989, and before July 1,  
 30    1990, the employee shall receive, in addition to temporary total  
 31    disability benefits not exceeding seventy-eight (78) weeks on account  
 32    of the injury, a weekly compensation of sixty percent (60%) of the  
 33    employee's average weekly wages, not to exceed one hundred  
 34    eighty-three dollars (\$183) average weekly wages, for the period stated  
 35    for the injury.

36       **(d)** With respect to injuries in the following schedule occurring on  
 37    and after July 1, 1990, and before July 1, 1991, the employee shall  
 38    receive, in addition to temporary total disability benefits not exceeding  
 39    seventy-eight (78) weeks on account of the injury, a weekly  
 40    compensation of sixty percent (60%) of the employee's average weekly  
 41    wages, not to exceed two hundred dollars (\$200) average weekly  
 42    wages, for the period stated for the injury.

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(1) Amputation: For the loss by separation of the thumb, sixty (60) weeks, of the index finger forty (40) weeks, of the second finger thirty-five (35) weeks, of the third or ring finger thirty (30) weeks, of the fourth or little finger twenty (20) weeks, of the hand by separation below the elbow joint two hundred (200) weeks, or the arm above the elbow two hundred fifty (250) weeks, of the big toe sixty (60) weeks, of the second toe thirty (30) weeks, of the third toe twenty (20) weeks, of the fourth toe fifteen (15) weeks, of the fifth or little toe ten (10) weeks, and for loss occurring before April 1, 1959, by separation of the foot below the knee joint one hundred fifty (150) weeks and of the leg above the knee joint two hundred (200) weeks; for loss occurring on and after April 1, 1959, by separation of the foot below the knee joint, one hundred seventy-five (175) weeks and of the leg above the knee joint two hundred twenty-five (225) weeks. The loss of more than one (1) phalange of a thumb or toes shall be considered as the loss of the entire thumb or toe. The loss of more than two (2) phalanges of a finger shall be considered as the loss of the entire finger. The loss of not more than one (1) phalange of a thumb or toe shall be considered as the loss of one-half (1/2) of the thumb or toe and compensation shall be paid for one-half (1/2) of the period for the loss of the entire thumb or toe. The loss of not more than one (1) phalange of a finger shall be considered as the loss of one-third (1/3) of the finger and compensation shall be paid for one-third (1/3) the period for the loss of the entire finger. The loss of more than one (1) phalange of the finger but not more than two (2) phalanges of the finger, shall be considered as the loss of one-half (1/2) of the finger and compensation shall be paid for one-half (1/2) of the period for the loss of the entire finger.

(2) For the loss by separation of both hands or both feet or the total sight of both eyes, or any two (2) such losses in the same accident, five hundred (500) weeks.

(3) For the permanent and complete loss of vision by enucleation or its reduction to one-tenth (1/10) of normal vision with glasses, one hundred seventy-five (175) weeks.

(4) For the permanent and complete loss of hearing in one (1) ear, seventy-five (75) weeks, and in both ears, two hundred (200) weeks.

(5) For the loss of one (1) testicle, fifty (50) weeks; for the loss of both testicles, one hundred fifty (150) weeks.

(b) With respect to injuries in the following schedule occurring prior to April 1, 1951, the employee shall receive in lieu of all other

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compensation on account of the injuries; a weekly compensation of fifty-five percent (55%) of the employee's average weekly wages. With respect to injuries in the following schedule occurring on and after April 1, 1951, and prior to April 1, 1955, the employee shall receive in lieu of all other compensation on account of the injuries a weekly compensation of sixty percent (60%) of the employee's average weekly wages. With respect to injuries in the following schedule occurring on and after April 1, 1955, and prior to July 1, 1971, the employee shall receive in addition to temporary total disability benefits not exceeding twenty-six (26) weeks on account of the injuries; a weekly compensation of sixty percent (60%) of the employee's average weekly wages. With respect to injuries in the following schedule occurring on and after July 1, 1971, and before July 1, 1977, the employee shall receive in addition to temporary total disability benefits not exceeding twenty-six (26) weeks on account of the injuries; a weekly compensation of sixty percent (60%) of the employee's average weekly wages; not to exceed one hundred dollars (\$100) average weekly wages; for the period stated for such injuries respectively. With respect to injuries in the following schedule occurring on and after July 1, 1977, and before July 1, 1979, the employee shall receive; in addition to temporary total disability benefits not exceeding twenty-six (26) weeks on account of the injury; a weekly compensation of sixty percent (60%) of the employee's average weekly wages not to exceed one hundred twenty-five dollars (\$125) average weekly wages; for the period stated for the injury.

(e) With respect to injuries in the following schedule set forth in subsection (h) occurring on and after July 1, 1979, and before July 1, 1988, the employee shall receive, in addition to temporary total disability benefits not exceeding fifty-two (52) weeks on account of the injury, a weekly compensation of sixty percent (60%) of the employee's average weekly wages not to exceed one hundred twenty-five dollars (\$125) average weekly wages for the period stated for the injury.

(f) With respect to injuries in the following schedule set forth in subsection (h) occurring on and after July 1, 1988, and before July 1, 1989, the employee shall receive, in addition to temporary total disability benefits not exceeding seventy-eight (78) weeks on account of the injury, a weekly compensation of sixty percent (60%) of the employee's average weekly wages, not to exceed one hundred sixty-six dollars (\$166) average weekly wages, for the period stated for the injury.

(g) With respect to injuries in the following schedule set forth in subsection (h) occurring on and after July 1, 1989, and before July 1,

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1990, the employee shall receive, in addition to temporary total disability benefits not exceeding seventy-eight (78) weeks on account of the injury, a weekly compensation of sixty percent (60%) of the employee's average weekly wages, not to exceed one hundred eighty-three dollars (\$183) average weekly wages, for the period stated for the injury.

(h) With respect to injuries in the following schedule occurring on and after July 1, 1990, and before July 1, 1991, the employee shall receive, in addition to temporary total disability benefits not exceeding seventy-eight (78) weeks on account of the injury, a weekly compensation of sixty percent (60%) of the employee's average weekly wages, not to exceed two hundred dollars (\$200) average weekly wages, for the period stated for the injury.

(1) Loss of use: The total permanent loss of the use of an arm, hand, thumb, finger, leg, foot, toe, or phalange shall be considered as the equivalent of the loss by separation of the arm, hand, thumb, finger, leg, foot, toe, or phalange, and compensation shall be paid for the same period as for the loss thereof by separation.

(2) Partial loss of use: For the permanent partial loss of the use of an arm, hand, thumb, finger, leg, foot, toe, or phalange, compensation shall be paid for the proportionate loss of the use of such arm, hand, thumb, finger, leg, foot, toe, or phalange.

(3) For injuries resulting in total permanent disability, five hundred (500) weeks.

(4) For any permanent reduction of the sight of an eye less than a total loss as specified in subsection ~~(a)(3)~~, **(d)(3)**, compensation shall be paid for a period proportionate to the degree of such permanent reduction without correction or glasses. However, when such permanent reduction without correction or glasses would result in one hundred percent (100%) loss of vision, but correction or glasses would result in restoration of vision, then in such event compensation shall be paid for fifty percent (50%) of such total loss of vision without glasses, plus an additional amount equal to the proportionate amount of such reduction with glasses, not to exceed an additional fifty percent (50%).

(5) For any permanent reduction of the hearing of one (1) or both ears, less than the total loss as specified in subsection ~~(a)(4)~~, **(d)(4)**, compensation shall be paid for a period proportional to the degree of such permanent reduction.

(6) In all other cases of permanent partial impairment, compensation proportionate to the degree of such permanent partial impairment, in the discretion of the worker's compensation

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board, not exceeding five hundred (500) weeks.

(7) In all cases of permanent disfigurement which may impair the future usefulness or opportunities of the employee, compensation, in the discretion of the worker's compensation board, not exceeding two hundred (200) weeks, except that no compensation shall be payable under this subdivision where compensation is payable elsewhere in this section.

~~(c)~~ (i) With respect to injuries in the following schedule occurring on and after July 1, 1991, the employee shall receive in addition to temporary total disability benefits, not exceeding one hundred twenty-five (125) weeks on account of the injury, compensation in an amount determined under the following schedule to be paid weekly at a rate of sixty-six and two-thirds percent (66 2/3%) of the employee's average weekly wages during the fifty-two (52) weeks immediately preceding the week in which the injury occurred.

(1) Amputation: For the loss by separation of the thumb, twelve (12) degrees of permanent impairment; of the index finger, eight (8) degrees of permanent impairment; of the second finger, seven (7) degrees of permanent impairment; of the third or ring finger, six (6) degrees of permanent impairment; of the fourth or little finger, four (4) degrees of permanent impairment; of the hand by separation below the elbow joint, forty (40) degrees of permanent impairment; of the arm above the elbow, fifty (50) degrees of permanent impairment; of the big toe, twelve (12) degrees of permanent impairment; of the second toe, six (6) degrees of permanent impairment; of the third toe, four (4) degrees of permanent impairment; of the fourth toe, three (3) degrees of permanent impairment; of the fifth or little toe, two (2) degrees of permanent impairment; by separation of the foot below the knee joint, thirty-five (35) degrees of permanent impairment; and of the leg above the knee joint, forty-five (45) degrees of permanent impairment.

(2) Amputations: For the loss by separation of any of the body parts described in subdivision (1) on or after July 1, 1997, and for the loss by separation of any of the body parts described in subdivision (3), (5), or (8), on or after July 1, 1999, the dollar values per degree applying on the date of the injury as described in subsection ~~(d)~~ (j) shall be multiplied by two (2). However, the doubling provision of this subdivision does not apply to a loss of use that is not a loss by separation.

(3) The loss of more than one (1) phalange of a thumb or toe shall be considered as the loss of the entire thumb or toe. The loss of

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more than two (2) phalanges of a finger shall be considered as the loss of the entire finger. The loss of not more than one (1) phalange of a thumb or toe shall be considered as the loss of one-half (1/2) of the degrees of permanent impairment for the loss of the entire thumb or toe. The loss of not more than one (1) phalange of a finger shall be considered as the loss of one-third (1/3) of the finger and compensation shall be paid for one-third (1/3) of the degrees payable for the loss of the entire finger. The loss of more than one (1) phalange of the finger but not more than two (2) phalanges of the finger shall be considered as the loss of one-half (1/2) of the finger and compensation shall be paid for one-half (1/2) of the degrees payable for the loss of the entire finger.

(4) For the loss by separation of both hands or both feet or the total sight of both eyes or any two (2) such losses in the same accident, one hundred (100) degrees of permanent impairment.

(5) For the permanent and complete loss of vision by enucleation, thirty-five (35) degrees of permanent impairment.

(6) For the reduction of vision to one-tenth (1/10) of normal vision with glasses, thirty-five (35) degrees of permanent impairment.

(7) For the permanent and complete loss of hearing in one (1) ear, fifteen (15) degrees of permanent impairment, and in both ears, forty (40) degrees of permanent impairment.

(8) For the loss of one (1) testicle, ten (10) degrees of permanent impairment; for the loss of both testicles, thirty (30) degrees of permanent impairment.

(9) Loss of use: The total permanent loss of the use of an arm, a hand, a thumb, a finger, a leg, a foot, a toe, or a phalange shall be considered as the equivalent of the loss by separation of the arm, hand, thumb, finger, leg, foot, toe, or phalange, and compensation shall be paid in the same amount as for the loss by separation. However, the doubling provision of subdivision (2) does not apply to a loss of use that is not a loss by separation.

(10) Partial loss of use: For the permanent partial loss of the use of an arm, a hand, a thumb, a finger, a leg, a foot, a toe, or a phalange, compensation shall be paid for the proportionate loss of the use of the arm, hand, thumb, finger, leg, foot, toe, or phalange.

(11) For injuries resulting in total permanent disability, the amount payable for impairment or five hundred (500) weeks of compensation, whichever is greater.

(12) For any permanent reduction of the sight of an eye less than

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1 a total loss as specified in subsection ~~(a)(3)~~, **(h)(4)**, the  
 2 compensation shall be paid in an amount proportionate to the  
 3 degree of a permanent reduction without correction or glasses.  
 4 However, when a permanent reduction without correction or  
 5 glasses would result in one hundred percent (100%) loss of  
 6 vision, then compensation shall be paid for fifty percent (50%) of  
 7 the total loss of vision without glasses, plus an additional amount  
 8 equal to the proportionate amount of the reduction with glasses,  
 9 not to exceed an additional fifty percent (50%).

10 (13) For any permanent reduction of the hearing of one (1) or both  
 11 ears, less than the total loss as specified in subsection ~~(a)(4)~~,  
 12 **(h)(5)**, compensation shall be paid in an amount proportionate to  
 13 the degree of a permanent reduction.

14 (14) In all other cases of permanent partial impairment,  
 15 compensation proportionate to the degree of a permanent partial  
 16 impairment, in the discretion of the worker's compensation board,  
 17 not exceeding one hundred (100) degrees of permanent  
 18 impairment.

19 (15) In all cases of permanent disfigurement which may impair  
 20 the future usefulness or opportunities of the employee,  
 21 compensation, in the discretion of the worker's compensation  
 22 board, not exceeding forty (40) degrees of permanent impairment  
 23 except that no compensation shall be payable under this  
 24 subdivision where compensation is payable elsewhere in this  
 25 section.

26 ~~(d)~~ **(j)** Compensation for permanent partial impairment shall be paid  
 27 according to the degree of permanent impairment for the injury  
 28 determined under subsection ~~(c)~~ **(i)** and the following:

29 (1) With respect to injuries occurring on and after July 1, 1991,  
 30 and before July 1, 1992, for each degree of permanent impairment  
 31 from one (1) to thirty-five (35), five hundred dollars (\$500) per  
 32 degree; for each degree of permanent impairment from thirty-six  
 33 (36) to fifty (50), nine hundred dollars (\$900) per degree; for each  
 34 degree of permanent impairment above fifty (50), one thousand  
 35 five hundred dollars (\$1,500) per degree.

36 (2) With respect to injuries occurring on and after July 1, 1992,  
 37 and before July 1, 1993, for each degree of permanent impairment  
 38 from one (1) to twenty (20), five hundred dollars (\$500) per  
 39 degree; for each degree of permanent impairment from  
 40 twenty-one (21) to thirty-five (35), eight hundred dollars (\$800)  
 41 per degree; for each degree of permanent impairment from  
 42 thirty-six (36) to fifty (50), one thousand three hundred dollars

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1 (\$1,300) per degree; for each degree of permanent impairment  
2 above fifty (50), one thousand seven hundred dollars (\$1,700) per  
3 degree.

4 (3) With respect to injuries occurring on and after July 1, 1993,  
5 and before July 1, 1997, for each degree of permanent impairment  
6 from one (1) to ten (10), five hundred dollars (\$500) per degree;  
7 for each degree of permanent impairment from eleven (11) to  
8 twenty (20), seven hundred dollars (\$700) per degree; for each  
9 degree of permanent impairment from twenty-one (21) to  
10 thirty-five (35), one thousand dollars (\$1,000) per degree; for  
11 each degree of permanent impairment from thirty-six (36) to fifty  
12 (50), one thousand four hundred dollars (\$1,400) per degree; for  
13 each degree of permanent impairment above fifty (50), one  
14 thousand seven hundred dollars (\$1,700) per degree.

15 (4) With respect to injuries occurring on and after July 1, 1997,  
16 and before July 1, 1998, for each degree of permanent impairment  
17 from one (1) to ten (10), seven hundred fifty dollars (\$750) per  
18 degree; for each degree of permanent impairment from eleven  
19 (11) to thirty-five (35), one thousand dollars (\$1,000) per degree;  
20 for each degree of permanent impairment from thirty-six (36) to  
21 fifty (50), one thousand four hundred dollars (\$1,400) per degree;  
22 for each degree of permanent impairment above fifty (50), one  
23 thousand seven hundred dollars (\$1,700) per degree.

24 (5) With respect to injuries occurring on and after July 1, 1998,  
25 and before July 1, 1999, for each degree of permanent impairment  
26 from one (1) to ten (10), seven hundred fifty dollars (\$750) per  
27 degree; for each degree of permanent impairment from eleven  
28 (11) to thirty-five (35), one thousand dollars (\$1,000) per degree;  
29 for each degree of permanent impairment from thirty-six (36) to  
30 fifty (50), one thousand four hundred dollars (\$1,400) per degree;  
31 for each degree of permanent impairment above fifty (50), one  
32 thousand seven hundred dollars (\$1,700) per degree.

33 (6) With respect to injuries occurring on and after July 1, 1999,  
34 and before July 1, 2000, for each degree of permanent impairment  
35 from one (1) to ten (10), nine hundred dollars (\$900) per degree;  
36 for each degree of permanent impairment from eleven (11) to  
37 thirty-five (35), one thousand one hundred dollars (\$1,100) per  
38 degree; for each degree of permanent impairment from thirty-six  
39 (36) to fifty (50), one thousand six hundred dollars (\$1,600) per  
40 degree; for each degree of permanent impairment above fifty (50),  
41 two thousand dollars (\$2,000) per degree.

42 (7) With respect to injuries occurring on and after July 1, 2000,

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and before July 1, 2001, for each degree of permanent impairment from one (1) to ten (10), one thousand one hundred dollars (\$1,100) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), one thousand three hundred dollars (\$1,300) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), two thousand dollars (\$2,000) per degree; for each degree of permanent impairment above fifty (50), two thousand five hundred fifty dollars (\$2,500) per degree.

(8) With respect to injuries occurring on and after July 1, 2001, for each degree of permanent impairment from one (1) to ten (10), one thousand three hundred dollars (\$1,300) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), one thousand five hundred dollars (\$1,500) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), two thousand four hundred dollars (\$2,400) per degree; for each degree of permanent impairment above fifty (50), three thousand dollars (\$3,000) per degree.

~~(e)~~ (k) The average weekly wages used in the determination of compensation for permanent partial impairment under subsections ~~(e)~~ (i) and ~~(d)~~ (j) shall not exceed the following:

(1) With respect to injuries occurring on or after July 1, 1991, and before July 1, 1992, four hundred ninety-two dollars (\$492).

(2) With respect to injuries occurring on or after July 1, 1992, and before July 1, 1993, five hundred forty dollars (\$540).

(3) With respect to injuries occurring on or after July 1, 1993, and before July 1, 1994, five hundred ninety-one dollars (\$591).

(4) With respect to injuries occurring on or after July 1, 1994, and before July 1, 1997, six hundred forty-two dollars (\$642).

(5) With respect to injuries occurring on or after July 1, 1997, and before July 1, 1998, six hundred seventy-two dollars (\$672).

(6) With respect to injuries occurring on or after July 1, 1998, and before July 1, 1999, seven hundred two dollars (\$702).

(7) With respect to injuries occurring on or after July 1, 1999, and before July 1, 2000, seven hundred thirty-two dollars (\$732).

(8) With respect to injuries occurring on or after July 1, 2000, and before July 1, 2001, seven hundred sixty-two dollars (\$762).

(9) With respect to injuries occurring on or after July 1, 2001, and before July 1, 2002, eight hundred twenty-two dollars (\$822).

(10) With respect to injuries occurring on or after July 1, 2002, **and before July 1, 2005**, eight hundred eighty-two dollars (\$882).

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1           **(11) With respect to injuries occurring on or after July 1,**  
 2           **2005, and before July 1, 2006, nine hundred dollars (\$900).**

3           **(12) With respect to injuries occurring on or after July 1,**  
 4           **2006, nine hundred thirty dollars (\$930).**

5           SECTION 5. IC 22-3-3-13 IS AMENDED TO READ AS  
 6           FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 13. (a) As used in this  
 7           section, "board" refers to the worker's compensation board created  
 8           under IC 22-3-1-1.

9           (b) If an employee who from any cause, had lost, or lost the use of,  
 10          one (1) hand, one (1) arm, one (1) foot, one (1) leg, or one (1) eye, and  
 11          in a subsequent industrial accident becomes permanently and totally  
 12          disabled by reason of the loss, or loss of use of, another such member  
 13          or eye, the employer shall be liable only for the compensation payable  
 14          for such second injury. However, in addition to such compensation and  
 15          after the completion of the payment therefor, the employee shall be  
 16          paid the remainder of the compensation that would be due for such  
 17          total permanent disability out of a special fund known as the second  
 18          injury fund, and created in the manner described in subsection (c).

19          (c) Whenever the board determines under the procedures set forth  
 20          in subsection (d) that an assessment is necessary to ensure that fund  
 21          beneficiaries, including applicants under section 4(e) of this chapter,  
 22          continue to receive compensation in a timely manner for a reasonable  
 23          prospective period, the board shall send notice not later than October  
 24          1 in any year to:

25               (1) all insurance carriers and other entities insuring or providing  
 26               coverage to employers who are or may be liable under this article  
 27               to pay compensation for personal injuries to or the death of their  
 28               employees under this article; and

29               (2) each employer carrying the employer's own risk;

30          stating that an assessment is necessary. After June 30, 1999, the board  
 31          may conduct an assessment under this subsection not more than one (1)  
 32          time annually. ~~Every insurance carrier and other entity insuring or~~  
 33          ~~providing coverage to employers who are or may be liable under this~~  
 34          ~~article to pay compensation for personal injuries to or death of their~~  
 35          ~~employees under this article and every employer carrying the~~  
 36          ~~employer's own risk, shall, within thirty (30) days of the board sending~~  
 37          ~~notice under this subsection, pay to the worker's compensation board~~  
 38          ~~for the benefit of the fund an assessed amount that~~ **The total amount**  
 39          **of the assessment** may not exceed two and one-half percent (2.5%) of  
 40          the total amount of all worker's compensation paid to injured  
 41          employees or their beneficiaries under IC 22-3-2 through IC 22-3-6 for  
 42          the calendar year next preceding the due date of such payment. For the

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1 purposes of calculating the assessment under this subsection, the board  
 2 may consider payments for temporary total disability, temporary partial  
 3 disability, permanent total impairment, permanent partial impairment,  
 4 or death of an employee. The board may not consider payments for  
 5 medical benefits in calculating an assessment under this subsection. If  
 6 the amount to the credit of the second injury fund on or before October  
 7 1 of any year exceeds one million dollars (\$1,000,000), the assessment  
 8 allowed under this subsection shall not be assessed or collected during  
 9 the ensuing year. But when on or before October 1 of any year the  
 10 amount to the credit of the fund is less than one million dollars  
 11 (\$1,000,000), the payments of not more than two and one-half percent  
 12 (2.5%) of the total amount of all worker's compensation paid to injured  
 13 employees or their beneficiaries under IC 22-3-2 through IC 22-3-6 for  
 14 the calendar year next preceding that date shall be resumed and paid  
 15 into the fund. The board may not use an assessment rate greater than  
 16 twenty-five hundredths of one percent (0.25%) above the amount  
 17 recommended by the study performed before the assessment. **The**  
 18 **board shall assess all employers for the liabilities, including**  
 19 **administrative expenses, of the second injury fund. The total**  
 20 **amount of the assessment shall be allocated between self-insured**  
 21 **employers and insured employers based on paid losses for the**  
 22 **preceding calendar year. The method of assessing self-insured**  
 23 **employers shall be based on paid losses. The total amount of**  
 24 **assessments allocated to insured employers shall be collected by the**  
 25 **insured employers' worker's compensation insurers according to**  
 26 **the proportion of each insurer's worker's compensation direct**  
 27 **standard premiums during the preceding calendar year in relation**  
 28 **to all insurer's worker's compensation direct standard premiums**  
 29 **during the preceding calendar year. The portion of the total**  
 30 **amount that is collected from self-insured employers is a sum equal**  
 31 **to that proportion of the paid losses for the preceding calendar**  
 32 **year, which the paid losses of all self-insured employers bore to the**  
 33 **total paid losses made by all self-insured employers and insured**  
 34 **employers during the preceding calendar year. The portion of the**  
 35 **total amount that is collected from insured employers is a sum**  
 36 **equal to that proportion of the total paid losses for the preceding**  
 37 **calendar year, which the total paid losses on behalf of all insured**  
 38 **employers bore to the total paid losses on behalf of all self-insured**  
 39 **employers and insured employers during the preceding calendar**  
 40 **year. An employer who has ceased to be a self-insurer continues to**  
 41 **be liable for assessments based on paid losses made by the**  
 42 **employer in the preceding calendar year.**

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(d) The board shall enter into a contract with an actuary or another qualified firm that has experience in calculating worker's compensation liabilities. Not later than September 1 of each year, the actuary or other qualified firm shall calculate the recommended funding level of the fund based on the previous year's claims and inform the board of the results of the calculation. If the amount to the credit of the fund is less than the amount required under subsection (c), the board may conduct an assessment under subsection (c). The board shall pay the costs of the contract under this subsection with money in the fund.

(e) An assessment collected under subsection (c) on an employer who is not self-insured must be assessed through a surcharge based on the employer's premium. An assessment collected under subsection (c) does not constitute an element of loss, but for the purpose of collection shall be treated as a separate cost imposed upon insured employers. A premium surcharge under this subsection must be collected at the same time and in the same manner in which the premium for coverage is collected, and must be shown as a separate amount on a premium statement. A premium surcharge under this subsection must be excluded from the definition of premium for all purposes, including the computation of insurance producer commissions or premium taxes. However, an insurer may cancel a worker's compensation policy for nonpayment of the premium surcharge. A cancellation under this subsection must be carried out under the statutes applicable to the nonpayment of premiums.

(f) The sums shall be paid by the board to the treasurer of state, to be deposited in a special account known as the second injury fund. The funds are not a part of the general fund of the state. Any balance remaining in the account at the end of any fiscal year shall not revert to the general fund. The funds shall be used only for the payment of awards of compensation and expense of medical examinations or treatment made and ordered by the board and chargeable against the fund pursuant to this section, and shall be paid for that purpose by the treasurer of state upon award or order of the board.

(g) If an employee who is entitled to compensation under IC 22-3-2 through IC 22-3-6 either:

- (1) exhausts the maximum benefits under section 22 of this chapter without having received the full amount of award granted to the employee under section 10 of this chapter; or
- (2) exhausts the employee's benefits under section 10 of this chapter;

then such employee may apply to the board, who may award the employee compensation from the second injury fund established by this

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section, as follows under subsection (h).

(h) An employee who has exhausted the employee's maximum benefits under section 10 of this chapter may be awarded additional compensation equal to sixty-six and two-thirds percent (66 2/3%) of the employee's average weekly wage at the time of the employee's injury, not to exceed the maximum then applicable under section 22 of this chapter, for a period of not to exceed one hundred fifty (150) weeks upon competent evidence sufficient to establish:

(1) that the employee is totally and permanently disabled from causes and conditions of which there are or have been objective conditions and symptoms proven that are not within the physical or mental control of the employee; and

(2) that the employee is unable to support the employee in any gainful employment, not associated with rehabilitative or vocational therapy.

(i) The additional award may be renewed during the employee's total and permanent disability after appropriate hearings by the board for successive periods not to exceed one hundred fifty (150) weeks each. The provisions of this section apply only to injuries occurring subsequent to April 1, 1950, for which awards have been or are in the future made by the board under section 10 of this chapter. Section 16 of this chapter does not apply to compensation awarded from the second injury fund under this section.

(j) All insurance carriers subject to an assessment under this section are required to provide to the board:

(1) not later than January 31 each calendar year; and

(2) not later than thirty (30) days after a change occurs;

the name, address, and electronic mail address of a representative authorized to receive the notice of an assessment.

SECTION 6. IC 22-3-3-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 21. In ~~all~~ cases of the death of an employee from an injury by an accident arising out of and in the course of the employee's employment under ~~such~~ circumstances that the employee would have been entitled to compensation if death had not resulted, the employer shall pay the burial expenses of ~~such the~~ employee, not exceeding ~~six~~ **seven** thousand **five hundred** dollars ~~(\$6,000)~~. **(\$7,500)**.

SECTION 7. IC 22-3-3-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 22. (a) ~~In computing the compensation under this law with respect to injuries occurring on and after April 1, 1963, and prior to April 1, 1965, the average weekly wages shall be considered to be not more than seventy dollars (\$70) nor~~

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less than thirty dollars (\$30). In computing the compensation under this law with respect to injuries occurring on and after April 1, 1965, and prior to April 1, 1967, the average weekly wages shall be considered to be not more than seventy-five dollars (\$75) and not less than thirty dollars (\$30). In computing the compensation under this law with respect to injuries occurring on and after April 1, 1967, and prior to April 1, 1969, the average weekly wages shall be considered to be not more than eighty-five dollars (\$85) and not less than thirty-five dollars (\$35). In computing the compensation under this law with respect to injuries occurring on and after April 1, 1969, and prior to July 1, 1971, the average weekly wages shall be considered to be not more than ninety-five dollars (\$95) and not less than thirty-five dollars (\$35). In computing the compensation under this law with respect to injuries occurring on and after July 1, 1971, and prior to July 1, 1974, the average weekly wages shall be considered to be: (A) Not more than: (1) one hundred dollars (\$100) if no dependents; (2) one hundred five dollars (\$105) if one (1) dependent; (3) one hundred ten dollars (\$110) if two (2) dependents; (4) one hundred fifteen dollars (\$115) if three (3) dependents; (5) one hundred twenty dollars (\$120) if four (4) dependents; and (6) one hundred twenty-five dollars (\$125) if five (5) or more dependents; and (B) Not less than thirty-five dollars (\$35). In computing compensation for temporary total disability, temporary partial disability, and total permanent disability under this law with respect to injuries occurring on and after July 1, 1974, and before July 1, 1976, the average weekly wages shall be considered to be (A) not more than one hundred thirty-five dollars (\$135), and (B) not less than seventy-five dollars (\$75). However, the weekly compensation payable shall in no case exceed the average weekly wages of the employee at the time of the injury. In computing compensation for temporary total disability, temporary partial disability and total permanent disability under this law with respect to injuries occurring on and after July 1, 1976, and before July 1, 1977, the average weekly wages shall be considered to be (1) not more than one hundred fifty-six dollars (\$156) and (2) not less than seventy-five dollars (\$75). However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury. In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to injuries occurring on and after July 1, 1977, and before July 1, 1979, the average weekly wages are considered to be (1) not more than one hundred eighty dollars (\$180); and (2) not less than seventy-five dollars (\$75). However, the weekly compensation payable may not exceed the average weekly wages of the

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employee at the time of the injury. In computing compensation for temporary total disability; temporary partial disability; and total permanent disability; with respect to injuries occurring on and after July 1, 1979; and before July 1, 1980; the average weekly wages are considered to be (1) not more than one hundred ninety-five dollars (\$195); and (2) not less than seventy-five dollars (\$75). However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury. In computing compensation for temporary total disability; temporary partial disability; and total permanent disability; with respect to injuries occurring on and after July 1, 1980; and before July 1, 1983; the average weekly wages are considered to be (1) not more than two hundred ten dollars (\$210); and (2) not less than seventy-five dollars (\$75). However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury. In computing compensation for temporary total disability; temporary partial disability; and total permanent disability; with respect to injuries occurring on and after July 1, 1983; and before July 1, 1984; the average weekly wages are considered to be (1) not more than two hundred thirty-four dollars (\$234) and (2) not less than seventy-five dollars (\$75). However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury. In computing compensation for temporary total disability; temporary partial disability; and total permanent disability; with respect to injuries occurring on and after July 1, 1984; and before July 1, 1985; the average weekly wages are considered to be (1) not more than two hundred forty-nine dollars (\$249) and (2) not less than seventy-five dollars (\$75). However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury. In computing compensation for temporary total disability; temporary partial disability; and total permanent disability; with respect to injuries occurring on and after July 1, 1985; and before July 1, 1986; the average weekly wages are considered to be:

- (1) not more than two hundred sixty-seven dollars (\$267); and
- (2) not less than seventy-five dollars (\$75).

However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury.

**(b)** In computing compensation for temporary total disability; temporary partial disability; and total permanent disability; with respect to injuries occurring on and after July 1, 1986; and before July 1, 1988; the average weekly wages are considered to be:

- (1) not more than two hundred eighty-five dollars (\$285); and

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(2) not less than seventy-five dollars (\$75).

However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury.

(c) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to injuries occurring on and after July 1, 1988, and before July 1, 1989, the average weekly wages are considered to be:

- (1) not more than three hundred eighty-four dollars (\$384); and
- (2) not less than seventy-five dollars (\$75).

However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury.

(d) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to injuries occurring on and after July 1, 1989, and before July 1, 1990, the average weekly wages are considered to be:

- (1) not more than four hundred eleven dollars (\$411); and
- (2) not less than seventy-five dollars (\$75).

However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury.

(e) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to injuries occurring on and after July 1, 1990, and before July 1, 1991, the average weekly wages are considered to be:

- (1) not more than four hundred forty-one dollars (\$441); and
- (2) not less than seventy-five dollars (\$75).

However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury.

(f) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to injuries occurring on and after July 1, 1991, and before July 1, 1992, the average weekly wages are considered to be:

- (1) not more than four hundred ninety-two dollars (\$492); and
- (2) not less than seventy-five dollars (\$75).

However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury.

(g) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to injuries occurring on and after July 1, 1992, and before July 1, 1993, the average weekly wages are considered to be:

- (1) not more than five hundred forty dollars (\$540); and
- (2) not less than seventy-five dollars (\$75).

However, the weekly compensation payable shall not exceed the

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average weekly wages of the employee at the time of the injury.

(h) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to injuries occurring on and after July 1, 1993, and before July 1, 1994, the average weekly wages are considered to be:

- (1) not more than five hundred ninety-one dollars (\$591); and
- (2) not less than seventy-five dollars (\$75).

However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury.

(i) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to injuries occurring on and after July 1, 1994, and before July 1, 1997, the average weekly wages are considered to be:

- (1) not more than six hundred forty-two dollars (\$642); and
- (2) not less than seventy-five dollars (\$75).

However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury.

(j) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, the average weekly wages are considered to be:

- (1) with respect to injuries occurring on and after July 1, 1997, and before July 1, 1998:

- (A) not more than six hundred seventy-two dollars (\$672); and
- (B) not less than seventy-five dollars (\$75);

- (2) with respect to injuries occurring on and after July 1, 1998, and before July 1, 1999:

- (A) not more than seven hundred two dollars (\$702); and
- (B) not less than seventy-five dollars (\$75);

- (3) with respect to injuries occurring on and after July 1, 1999, and before July 1, 2000:

- (A) not more than seven hundred thirty-two dollars (\$732); and

- (B) not less than seventy-five dollars (\$75);

- (4) with respect to injuries occurring on and after July 1, 2000, and before July 1, 2001:

- (A) not more than seven hundred sixty-two dollars (\$762); and
- (B) not less than seventy-five dollars (\$75);

- (5) with respect to injuries occurring on and after July 1, 2001, and before July 1, 2002:

- (A) not more than eight hundred twenty-two dollars (\$822); and

- (B) not less than seventy-five dollars (\$75); and

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(6) with respect to injuries occurring on and after July 1, 2002,  
and before July 1, 2005:

(A) not more than eight hundred eighty-two dollars (\$882);  
and

(B) not less than seventy-five dollars (\$75);

(7) with respect to injuries occurring on and after July 1,  
2005, and before July 1, 2006:

(A) not more than nine hundred dollars (\$900); and

(B) not less than seventy-five dollars (\$75); and

(8) with respect to injuries occurring on and after July 1,  
2006:

(A) not more than nine hundred thirty dollars (\$930); and

(B) not less than seventy-five dollars (\$75).

However, the weekly compensation payable shall not exceed the  
average weekly wages of the employee at the time of the injury.

(c) For the purpose of this section only and with respect to injuries  
occurring on and after July 1, 1971, and prior to July 1, 1974, only, the  
term "dependent" as used in this section shall mean persons defined as  
presumptive dependents under section 19 of this chapter, except that  
such dependency shall be determined as of the date of the injury to the  
employee.

(d) With respect to any injury occurring on and after April 1, 1955,  
and prior to April 1, 1957, the maximum compensation exclusive of  
medical benefits, which shall be paid for an injury under any provisions  
of this law or under any combination of its provisions shall not exceed  
twelve thousand five hundred dollars (\$12,500) in any case. With  
respect to any injury occurring on and after April 1, 1957 and prior to  
April 1, 1963, the maximum compensation exclusive of medical  
benefits, which shall be paid for an injury under any provision of this  
law or under any combination of its provisions shall not exceed fifteen  
thousand dollars (\$15,000) in any case. With respect to any injury  
occurring on and after April 1, 1963, and prior to April 1, 1965, the  
maximum compensation exclusive of medical benefits, which shall be  
paid for an injury under any provision of this law or under any  
combination of its provisions shall not exceed sixteen thousand five  
hundred dollars (\$16,500) in any case. With respect to any injury  
occurring on and after April 1, 1965, and prior to April 1, 1967, the  
maximum compensation exclusive of medical benefits which shall be  
paid for any injury under any provision of this law or any combination  
of provisions shall not exceed twenty thousand dollars (\$20,000) in any  
case. With respect to any injury occurring on and after April 1, 1967,  
and prior to July 1, 1971, the maximum compensation exclusive of

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1 medical benefits which shall be paid for an injury under any provision  
 2 of this law or any combination of provisions shall not exceed  
 3 twenty-five thousand dollars (\$25,000) in any case. With respect to any  
 4 injury occurring on and after July 1, 1971, and prior to July 1, 1974, the  
 5 maximum compensation exclusive of medical benefits which shall be  
 6 paid for any injury under any provision of this law or any combination  
 7 of provisions shall not exceed thirty thousand dollars (\$30,000) in any  
 8 case. With respect to any injury occurring on and after July 1, 1974,  
 9 and before July 1, 1976, the maximum compensation exclusive of  
 10 medical benefits which shall be paid for an injury under any provision  
 11 of this law or any combination of provisions shall not exceed forty-five  
 12 thousand dollars (\$45,000) in any case. With respect to an injury  
 13 occurring on and after July 1, 1976, and before July 1, 1977, the  
 14 maximum compensation, exclusive of medical benefits, which shall be  
 15 paid for any injury under any provision of this law or any combination  
 16 of provisions shall not exceed fifty-two thousand dollars (\$52,000) in  
 17 any case. With respect to any injury occurring on and after July 1,  
 18 1977, and before July 1, 1979, the maximum compensation, exclusive  
 19 of medical benefits, which may be paid for an injury under any  
 20 provision of this law or any combination of provisions may not exceed  
 21 sixty thousand dollars (\$60,000) in any case. With respect to any injury  
 22 occurring on and after July 1, 1979, and before July 1, 1980, the  
 23 maximum compensation, exclusive of medical benefits, which may be  
 24 paid for an injury under any provisions of this law or any combination  
 25 of provisions may not exceed sixty-five thousand dollars (\$65,000) in  
 26 any case. With respect to any injury occurring on and after July 1,  
 27 1980, and before July 1, 1983, the maximum compensation, exclusive  
 28 of medical benefits, which may be paid for an injury under any  
 29 provisions of this law or any combination of provisions may not exceed  
 30 seventy thousand dollars (\$70,000) in any case. With respect to any  
 31 injury occurring on and after July 1, 1983, and before July 1, 1984, the  
 32 maximum compensation, exclusive of medical benefits, which may be  
 33 paid for an injury under any provisions of this law or any combination  
 34 of provisions may not exceed seventy-eight thousand dollars (\$78,000)  
 35 in any case. With respect to any injury occurring on and after July 1,  
 36 1984, and before July 1, 1985, the maximum compensation, exclusive  
 37 of medical benefits, which may be paid for an injury under any  
 38 provisions of this law or any combination of provisions may not exceed  
 39 eighty-three thousand dollars (\$83,000) in any case.

40 (k) With respect to any injury occurring on and after July 1, 1985,  
 41 and before July 1, 1986, the maximum compensation, exclusive of  
 42 medical benefits, which may be paid for an injury under any provisions

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1 of this law or any combination of provisions may not exceed  
2 eighty-nine thousand dollars (\$89,000) in any case.

3 (l) With respect to any injury occurring on and after July 1, 1986,  
4 and before July 1, 1988, the maximum compensation, exclusive of  
5 medical benefits, which may be paid for an injury under any provisions  
6 of this law or any combination of provisions may not exceed  
7 ninety-five thousand dollars (\$95,000) in any case.

8 (m) With respect to any injury occurring on and after July 1, 1988,  
9 and before July 1, 1989, the maximum compensation, exclusive of  
10 medical benefits, which may be paid for an injury under any provisions  
11 of this law or any combination of provisions may not exceed one  
12 hundred twenty-eight thousand dollars (\$128,000) in any case.

13 (n) With respect to any injury occurring on and after July 1, 1989,  
14 and before July 1, 1990, the maximum compensation, exclusive of  
15 medical benefits, which may be paid for an injury under any provisions  
16 of this law or any combination of provisions may not exceed one  
17 hundred thirty-seven thousand dollars (\$137,000) in any case.

18 (o) With respect to any injury occurring on and after July 1, 1990,  
19 and before July 1, 1991, the maximum compensation, exclusive of  
20 medical benefits, which may be paid for an injury under any provisions  
21 of this law or any combination of provisions may not exceed one  
22 hundred forty-seven thousand dollars (\$147,000) in any case.

23 (p) With respect to any injury occurring on and after July 1, 1991,  
24 and before July 1, 1992, the maximum compensation, exclusive of  
25 medical benefits, that may be paid for an injury under any provisions  
26 of this law or any combination of provisions may not exceed one  
27 hundred sixty-four thousand dollars (\$164,000) in any case.

28 (q) With respect to any injury occurring on and after July 1, 1992,  
29 and before July 1, 1993, the maximum compensation, exclusive of  
30 medical benefits, that may be paid for an injury under any provisions  
31 of this law or any combination of provisions may not exceed one  
32 hundred eighty thousand dollars (\$180,000) in any case.

33 (r) With respect to any injury occurring on and after July 1, 1993,  
34 and before July 1, 1994, the maximum compensation, exclusive of  
35 medical benefits, that may be paid for an injury under any provisions  
36 of this law or any combination of provisions may not exceed one  
37 hundred ninety-seven thousand dollars (\$197,000) in any case.

38 (s) With respect to any injury occurring on and after July 1, 1994,  
39 and before July 1, 1997, the maximum compensation, exclusive of  
40 medical benefits, which may be paid for an injury under any provisions  
41 of this law or any combination of provisions may not exceed two  
42 hundred fourteen thousand dollars (\$214,000) in any case.

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(t) The maximum compensation, exclusive of medical benefits, that may be paid for an injury under any provision of this law or any combination of provisions may not exceed the following amounts in any case:

(1) With respect to an injury occurring on and after July 1, 1997, and before July 1, 1998, two hundred twenty-four thousand dollars (\$224,000).

(2) With respect to an injury occurring on and after July 1, 1998, and before July 1, 1999, two hundred thirty-four thousand dollars (\$234,000).

(3) With respect to an injury occurring on and after July 1, 1999, and before July 1, 2000, two hundred forty-four thousand dollars (\$244,000).

(4) With respect to an injury occurring on and after July 1, 2000, and before July 1, 2001, two hundred fifty-four thousand dollars (\$254,000).

(5) With respect to an injury occurring on and after July 1, 2001, and before July 1, 2002, two hundred seventy-four thousand dollars (\$274,000).

(6) With respect to an injury occurring on and after July 1, 2002, and before July 1, 2005, two hundred ninety-four thousand dollars (\$294,000).

**(7) With respect to an injury occurring on and after July 1, 2005, and before July 1, 2006, three hundred thousand dollars (\$300,000).**

**(8) With respect to an injury occurring on and after July 1, 2006, three hundred ten thousand dollars (\$310,000).**

SECTION 8. IC 22-3-3-27 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 27. (a) The power and jurisdiction of the worker's compensation board over each case shall be continuing and from time to time it may, upon its own motion or upon the application of either party, on account of a change in conditions, make such modification or change in the award ending, lessening, continuing, or extending the payments previously awarded, either by agreement or upon hearing, as it may deem just, subject to the maximum and minimum provided for in IC 22-3-2 through IC 22-3-6.

(b) Upon making any such change, the board shall immediately send to each of the parties a copy of the modified award. No such modification shall affect the previous award as to any money paid thereunder.

(c) The board shall not make any such modification upon its own motion nor shall any application therefor be filed by either party after

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the expiration of two (2) years from the **latest of the following:**

(1) **The last day for which compensation was paid under the original award made either by agreement or upon hearing, except that applications for increased permanent partial impairment are barred unless filed within one (1) year from the last day for which compensation was paid for:**

(A) **temporary total disability;**

(B) **permanent partial impairment; or**

(C) **permanent total disability.**

(2) **The date of an award for:**

(A) **temporary total disability;**

(B) **permanent partial impairment; or**

(C) **permanent total disability.**

(3) **The last day that medical services under section 4 of this chapter were provided to the employee.**

The board may at any time correct any clerical error in any finding or award.

SECTION 9. IC 22-3-7-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) Every employer and every employee, except as stated in this chapter, shall comply with this chapter, requiring the employer and employee to pay and accept compensation for disablement or death by occupational disease arising out of and in the course of the employment, and shall be bound thereby. **The burden of proof is on the employee. The proof by the employee of an element of a claim based on disablement or death by occupational disease does not create a presumption in favor of the employee with regard to another element of the claim.**

(b) This chapter does not apply to employees of municipal corporations in Indiana who are members of:

(1) the fire department or police department of ~~any such~~ a municipality; and

(2) a firefighters' pension fund or a police officers' pension fund.

However, if the common council elects to purchase and procure worker's occupational disease insurance to insure ~~said~~ the employees with respect to medical benefits under this chapter, the medical provisions apply to members of the fire department or police department of ~~any such~~ a municipal corporation who are also members of a firefighters' pension fund or a police officers' pension fund.

(c) When any municipal corporation purchases or procures worker's occupational disease insurance covering members of the fire department or police department who are also members of a firefighters' pension fund or a police officers' pension fund and pays the

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1 premium or premiums for the insurance, the payment of the premiums  
2 is a legal and allowable expenditure of funds of any municipal  
3 corporation.

4 (d) Except as provided in subsection (e), where the common council  
5 has procured worker's occupational disease insurance as provided  
6 under this section, ~~any~~ a member of the fire department or police  
7 department employed in the city carrying the worker's occupational  
8 disease insurance under this section is limited to recovery of medical  
9 and surgical care, medicines, laboratory, curative and palliative agents  
10 and means, x-ray, diagnostic and therapeutic services to the extent that  
11 the services are provided for in the worker's occupational disease  
12 policy ~~so~~ procured by the city, and may not also recover in addition to  
13 that policy for the same benefits provided in IC 36-8-4.

14 (e) If the medical benefits provided under a worker's occupational  
15 disease policy procured by the common council terminate for any  
16 reason before the police officer or firefighter is fully recovered, the  
17 common council shall provide medical benefits that are necessary until  
18 the police officer or firefighter is no longer in need of medical care.

19 (f) Nothing in this section affects the rights and liabilities of  
20 employees and employers had by them prior to April 1, 1963, under  
21 this chapter.

22 SECTION 10. IC 22-3-7-15 IS AMENDED TO READ AS  
23 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 15. In ~~all~~ cases of the  
24 death of an employee from an occupational disease arising out of and  
25 in the course of the employee's employment under ~~such~~ circumstances  
26 that the employee would have been entitled to compensation if death  
27 had not resulted, the employer shall pay the burial expenses of ~~such~~ the  
28 employee, not exceeding ~~six~~ **seven** thousand **five hundred** dollars  
29 ~~(\$6,000)~~ **(\$7,500)**.

30 SECTION 11. IC 22-3-7-16 IS AMENDED TO READ AS  
31 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 16. (a) Compensation  
32 shall be allowed on account of disablement from occupational disease  
33 resulting in only temporary total disability to work or temporary partial  
34 disability to work beginning with the eighth day of such disability  
35 except for the medical benefits provided for in section 17 of this  
36 chapter. Compensation shall be allowed for the first seven (7) calendar  
37 days only as provided in this section. The first weekly installment of  
38 compensation for temporary disability is due fourteen (14) days after  
39 the disability begins. Not later than fifteen (15) days from the date that  
40 the first installment of compensation is due, the employer or the  
41 employer's insurance carrier shall tender to the employee or to the  
42 employee's dependents, with all compensation due, a properly prepared

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1 compensation agreement in a form prescribed by the board. Whenever  
 2 an employer or the employer's insurance carrier denies or is not able to  
 3 determine liability to pay compensation or benefits, the employer or the  
 4 employer's insurance carrier shall notify the worker's compensation  
 5 board and the employee in writing on a form prescribed by the worker's  
 6 compensation board not later than thirty (30) days after the employer's  
 7 knowledge of the claimed disablement. If a determination of liability  
 8 cannot be made within thirty (30) days, the worker's compensation  
 9 board may approve an additional thirty (30) days upon a written request  
 10 of the employer or the employer's insurance carrier that sets forth the  
 11 reasons that the determination could not be made within thirty (30)  
 12 days and states the facts or circumstances that are necessary to  
 13 determine liability within the additional thirty (30) days. More than  
 14 thirty (30) days of additional time may be approved by the worker's  
 15 compensation board upon the filing of a petition by the employer or the  
 16 employer's insurance carrier that sets forth:

- 17 (1) the extraordinary circumstances that have precluded a
- 18 determination of liability within the initial sixty (60) days;
- 19 (2) the status of the investigation on the date the petition is filed;
- 20 (3) the facts or circumstances that are necessary to make a
- 21 determination; and
- 22 (4) a timetable for the completion of the remaining investigation.

23 An employer who fails to comply with this section is subject to a civil  
 24 penalty of fifty dollars (\$50), to be assessed and collected by the board  
 25 upon notice and hearing. Civil penalties collected under this section  
 26 shall be deposited in the state general fund.

27 (b) Once begun, temporary total disability benefits may not be  
 28 terminated by the employer unless:

- 29 (1) the employee has returned to work;
- 30 (2) the employee has died;
- 31 (3) the employee has refused to undergo a medical examination
- 32 under section 20 of this chapter;
- 33 (4) the employee has received five hundred (500) weeks of
- 34 temporary total disability benefits or has been paid the maximum
- 35 compensation allowable under section 19 of this chapter; or
- 36 (5) the employee is unable or unavailable to work for reasons
- 37 unrelated to the compensable disease.

38 In all other cases the employer must notify the employee in writing of  
 39 the employer's intent to terminate the payment of temporary total  
 40 disability benefits, and of the availability of employment, if any, on a  
 41 form approved by the board. If the employee disagrees with the  
 42 proposed termination, the employee must give written notice of

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disagreement to the board and the employer within seven (7) days after receipt of the notice of intent to terminate benefits. If the board and employer do not receive a notice of disagreement under this section, the employee's temporary total disability benefits shall be terminated. Upon receipt of the notice of disagreement, the board shall immediately contact the parties, which may be by telephone or other means and attempt to resolve the disagreement. If the board is unable to resolve the disagreement within ten (10) days of receipt of the notice of disagreement, the board shall immediately arrange for an evaluation of the employee by an independent medical examiner. The independent medical examiner shall be selected by mutual agreement of the parties or, if the parties are unable to agree, appointed by the board under IC 22-3-4-11. If the independent medical examiner determines that the employee is no longer temporarily disabled or is still temporarily disabled but can return to employment that the employer has made available to the employee, or if the employee fails or refuses to appear for examination by the independent medical examiner, temporary total disability benefits may be terminated. If either party disagrees with the opinion of the independent medical examiner, the party shall apply to the board for a hearing under section 27 of this chapter.

(c) An employer is not required to continue the payment of temporary total disability benefits for more than fourteen (14) days after the employer's proposed termination date unless the independent medical examiner determines that the employee is temporarily disabled and unable to return to any employment that the employer has made available to the employee.

(d) If it is determined that as a result of this section temporary total disability benefits were overpaid, the overpayment shall be deducted from any benefits due the employee under this section and, if there are no benefits due the employee or the benefits due the employee do not equal the amount of the overpayment, the employee shall be responsible for paying any overpayment which cannot be deducted from benefits due the employee.

~~(e) For disablements occurring on and after April 1, 1951, and prior to July 1, 1971, from occupational disease resulting in temporary total disability for any work there shall be paid to the disabled employee during such temporary total disability a weekly compensation equal to sixty percent (60%) of the employee's average weekly wages for a period not to exceed five hundred (500) weeks. Compensation shall be allowed for the first seven (7) calendar days only if the disability continues for longer than twenty-eight (28) days.~~

For disablements occurring on and after July 1, 1971, and prior to

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July 1, 1974, from occupational disease resulting in temporary total disability for any work there shall be paid to the disabled employee during such temporary total disability a weekly compensation equal to sixty percent (60%) of the employee's average weekly wages, as defined in section 19 of this chapter, for a period not to exceed five hundred (500) weeks. Compensation shall be allowed for the first seven (7) calendar days only if the disability continues for longer than twenty-eight (28) days.

For disablements occurring on and after July 1, 1974, and before July 1, 1976, from occupational disease resulting in temporary total disability for any work there shall be paid to the disabled employee during such temporary total disability a weekly compensation equal to sixty-six and two-thirds percent (66 2/3%) of the employee's average weekly wages, up to one hundred thirty-five dollars (\$135) average weekly wages, as defined in section 19 of this chapter, for a period not to exceed five hundred (500) weeks. Compensation shall be allowed for the first seven (7) calendar days only if the disability continues for longer than twenty-one (21) days.

(e) For disablements occurring on and after July 1, 1976, from occupational disease resulting in temporary total disability for any work there shall be paid to the disabled employee during the temporary total disability weekly compensation equal to sixty-six and two-thirds percent (66 2/3%) of the employee's average weekly wages, as defined in section 19 of this chapter, for a period not to exceed five hundred (500) weeks. Compensation shall be allowed for the first seven (7) calendar days only if the disability continues for longer than twenty-one (21) days.

(f) For disablements occurring on and after April 1, 1951, and prior to July 1, 1971, from occupational disease resulting in temporary partial disability for work there shall be paid to the disabled employee during such disability a weekly compensation equal to sixty percent (60%) of the difference between the employee's average weekly wages and the weekly wages at which the employee is actually employed after the disablement, for a period not to exceed three hundred (300) weeks. Compensation shall be allowed for the first seven (7) calendar days only if the disability continues for longer than twenty-eight (28) days. In case of partial disability after the period of temporary total disability, the later period shall be included as part of the maximum period allowed for partial disability.

For disablements occurring on and after July 1, 1971, and prior to July 1, 1974, from occupational disease resulting in temporary partial disability for work there shall be paid to the disabled employee during

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such disability a weekly compensation equal to sixty percent (60%) of the difference between the employee's average weekly wages, as defined in section 19 of this chapter, and the weekly wages at which the employee is actually employed after the disablement, for a period not to exceed three hundred (300) weeks. Compensation shall be allowed for the first seven (7) calendar days only if the disability continues for longer than twenty-eight (28) days. In case of partial disability after the period of temporary total disability, the latter period shall be included as a part of the maximum period allowed for partial disability.

(f) For disablements occurring on and after July 1, 1974, from occupational disease resulting in temporary partial disability for work there shall be paid to the disabled employee during such disability a weekly compensation equal to sixty-six and two-thirds percent (66 2/3%) of the difference between the employee's average weekly wages, as defined in section 19 of this chapter, and the weekly wages at which ~~he~~ **the employee** is actually employed after the disablement, for a period not to exceed three hundred (300) weeks. Compensation shall be allowed for the first seven (7) calendar days only if the disability continues for longer than twenty-one (21) days. In case of partial disability after the period of temporary total disability, the latter period shall be included as a part of the maximum period allowed for partial disability.

(g) For disabilities occurring on and after April 1, 1951, and prior to April 1, 1955; from occupational disease in the following schedule; the employee shall receive in lieu of all other compensation; on account of such disabilities; a weekly compensation of sixty percent (60%) of the employee's average weekly wage; for disabilities occurring on and after April 1, 1955; and prior to July 1, 1971, from occupational disease in the following schedule; the employee shall receive in addition to disability benefits not exceeding twenty-six (26) weeks on account of said occupational disease a weekly compensation of sixty percent (60%) of the employee's average weekly wages.

For disabilities occurring on and after July 1, 1971, and before July 1, 1977; from occupational disease in the following schedule; the employee shall receive in addition to disability benefits not exceeding twenty-six (26) weeks on account of said occupational disease a weekly compensation of sixty percent (60%) of his average weekly wages not to exceed one hundred dollars (\$100) average weekly wages; for the period stated for such disabilities respectively.

For disabilities occurring on and after July 1, 1977; and before July 1, 1979; from occupational disease in the following schedule; the employee shall receive in addition to disability benefits not exceeding

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twenty-six (26) weeks on account of the occupational disease a weekly compensation of sixty percent (60%) of the employee's average weekly wages; not to exceed one hundred twenty-five dollars (\$125) average weekly wages; for the period stated for the disabilities:

(g) For disabilities occurring on and after July 1, 1979, and before July 1, 1988, from occupational disease in the following schedule set forth in subsection (j), the employee shall receive in addition to disability benefits, not exceeding fifty-two (52) weeks on account of the occupational disease, a weekly compensation of sixty percent (60%) of the employee's average weekly wages, not to exceed one hundred twenty-five dollars (\$125) average weekly wages, for the period stated for the disabilities.

(h) For disabilities occurring on and after July 1, 1988, and before July 1, 1989, from occupational disease in the following schedule set forth in subsection (j), the employee shall receive in addition to disability benefits, not exceeding seventy-eight (78) weeks on account of the occupational disease, a weekly compensation of sixty percent (60%) of the employee's average weekly wages, not to exceed one hundred sixty-six dollars (\$166) average weekly wages, for the period stated for the disabilities.

(i) For disabilities occurring on and after July 1, 1989, and before July 1, 1990, from occupational disease in the following schedule set forth in subsection (j), the employee shall receive in addition to disability benefits, not exceeding seventy-eight (78) weeks on account of the occupational disease, a weekly compensation of sixty percent (60%) of the employee's average weekly wages, not to exceed one hundred eighty-three dollars (\$183) average weekly wages, for the period stated for the disabilities.

(j) For disabilities occurring on and after July 1, 1990, and before July 1, 1991, from occupational disease in the following schedule, the employee shall receive in addition to disability benefits, not exceeding seventy-eight (78) weeks on account of the occupational disease, a weekly compensation of sixty percent (60%) of the employee's average weekly wages, not to exceed two hundred dollars (\$200) average weekly wages, for the period stated for the disabilities.

(1) Amputations: For the loss by separation, of the thumb, sixty (60) weeks; of the index finger, forty (40) weeks; of the second finger, thirty-five (35) weeks; of the third or ring finger, thirty (30) weeks; of the fourth or little finger, twenty (20) weeks; of the hand by separation below the elbow, two hundred (200) weeks; of the arm above the elbow joint, two hundred fifty (250) weeks; of the big toe, sixty (60) weeks; of the second toe, thirty (30) weeks;

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of the third toe, twenty (20) weeks; of the fourth toe, fifteen (15) weeks; of the fifth or little toe, ten (10) weeks; of the foot below the knee joint, one hundred fifty (150) weeks; and of the leg above the knee joint, two hundred (200) weeks. The loss of more than one (1) phalange of a thumb or toe shall be considered as the loss of the entire thumb or toe. The loss of more than two (2) phalanges of a finger shall be considered as the loss of the entire finger. The loss of not more than one (1) phalange of a thumb or toe shall be considered as the loss of one-half (1/2) of the thumb or toe and compensation shall be paid for one-half (1/2) of the period for the loss of the entire thumb or toe. The loss of not more than two (2) phalanges of a finger shall be considered as the loss of one-half (1/2) the finger and compensation shall be paid for one-half (1/2) of the period for the loss of the entire finger.

(2) Loss of Use: The total permanent loss of the use of an arm, hand, thumb, finger, leg, foot, toe, or phalange shall be considered as the equivalent of the loss by separation of the arm, hand, thumb, finger, leg, foot, toe, or phalange and the compensation shall be paid for the same period as for the loss thereof by separation.

(3) Partial Loss of Use: For the permanent partial loss of the use of an arm, hand, thumb, finger, leg, foot, toe, or phalange, compensation shall be paid for the proportionate loss of the use of such arm, hand, thumb, finger, leg, foot, toe, or phalange.

(4) For disablements for occupational disease resulting in total permanent disability, five hundred (500) weeks.

(5) For the loss of both hands, or both feet, or the total sight of both eyes, or any two (2) of such losses resulting from the same disablement by occupational disease, five hundred (500) weeks.

(6) For the permanent and complete loss of vision by enucleation of an eye or its reduction to one-tenth (1/10) of normal vision with glasses, one hundred fifty (150) weeks, and for any other permanent reduction of the sight of an eye, compensation shall be paid for a period proportionate to the degree of such permanent reduction without correction or glasses. However, when such permanent reduction without correction or glasses would result in one hundred percent (100%) loss of vision, but correction or glasses would result in restoration of vision, then compensation shall be paid for fifty percent (50%) of such total loss of vision without glasses plus an additional amount equal to the proportionate amount of such reduction with glasses, not to exceed an additional fifty percent (50%).

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(7) For the permanent and complete loss of hearing, two hundred (200) weeks.

(8) In all other cases of permanent partial impairment, compensation proportionate to the degree of such permanent partial impairment, in the discretion of the worker's compensation board, not exceeding five hundred (500) weeks.

(9) In all cases of permanent disfigurement, which may impair the future usefulness or opportunities of the employee, compensation in the discretion of the worker's compensation board, not exceeding two hundred (200) weeks, except that no compensation shall be payable under this paragraph where compensation shall be payable under subdivisions (1) through (8). Where compensation for temporary total disability has been paid, this amount of compensation shall be deducted from any compensation due for permanent disfigurement.

(k) With respect to disablements in the following schedule occurring on and after July 1, 1991, the employee shall receive in addition to temporary total disability benefits, not exceeding one hundred twenty-five (125) weeks on account of the disablement, compensation in an amount determined under the following schedule to be paid weekly at a rate of sixty-six and two-thirds percent (66 2/3%) of the employee's average weekly wages during the fifty-two (52) weeks immediately preceding the week in which the disablement occurred:

(1) Amputation: For the loss by separation of the thumb, twelve (12) degrees of permanent impairment; of the index finger, eight (8) degrees of permanent impairment; of the second finger, seven (7) degrees of permanent impairment; of the third or ring finger, six (6) degrees of permanent impairment; of the fourth or little finger, four (4) degrees of permanent impairment; of the hand by separation below the elbow joint, forty (40) degrees of permanent impairment; of the arm above the elbow, fifty (50) degrees of permanent impairment; of the big toe, twelve (12) degrees of permanent impairment; of the second toe, six (6) degrees of permanent impairment; of the third toe, four (4) degrees of permanent impairment; of the fourth toe, three (3) degrees of permanent impairment; of the fifth or little toe, two (2) degrees of permanent impairment; of separation of the foot below the knee joint, thirty-five (35) degrees of permanent impairment; and of the leg above the knee joint, forty-five (45) degrees of permanent impairment.

(2) Amputations occurring on or after July 1, 1997: For the loss

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by separation of any of the body parts described in subdivision (1) on or after July 1, 1997, the dollar values per degree applying on the date of the injury as described in subsection ~~(h)~~ (1) shall be multiplied by two (2). However, the doubling provision of this subdivision does not apply to a loss of use that is not a loss by separation.

(3) The loss of more than one (1) phalange of a thumb or toe shall be considered as the loss of the entire thumb or toe. The loss of more than two (2) phalanges of a finger shall be considered as the loss of the entire finger. The loss of not more than one (1) phalange of a thumb or toe shall be considered as the loss of one-half (1/2) of the degrees of permanent impairment for the loss of the entire thumb or toe. The loss of not more than one (1) phalange of a finger shall be considered as the loss of one-third (1/3) of the finger and compensation shall be paid for one-third (1/3) of the degrees payable for the loss of the entire finger. The loss of more than one (1) phalange of the finger but not more than two (2) phalanges of the finger shall be considered as the loss of one-half (1/2) of the finger and compensation shall be paid for one-half (1/2) of the degrees payable for the loss of the entire finger.

(4) For the loss by separation of both hands or both feet or the total sight of both eyes or any two (2) such losses in the same accident, one hundred (100) degrees of permanent impairment.

(5) For the permanent and complete loss of vision by enucleation or its reduction to one-tenth (1/10) of normal vision with glasses, thirty-five (35) degrees of permanent impairment.

(6) For the permanent and complete loss of hearing in one (1) ear, fifteen (15) degrees of permanent impairment, and in both ears, forty (40) degrees of permanent impairment.

(7) For the loss of one (1) testicle, ten (10) degrees of permanent impairment; for the loss of both testicles, thirty (30) degrees of permanent impairment.

(8) Loss of use: The total permanent loss of the use of an arm, a hand, a thumb, a finger, a leg, a foot, a toe, or a phalange shall be considered as the equivalent of the loss by separation of the arm, hand, thumb, finger, leg, foot, toe, or phalange, and compensation shall be paid in the same amount as for the loss by separation. However, the doubling provision of subdivision (2) does not apply to a loss of use that is not a loss by separation.

(9) Partial loss of use: For the permanent partial loss of the use of an arm, a hand, a thumb, a finger, a leg, a foot, a toe, or a

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phalange, compensation shall be paid for the proportionate loss of the use of the arm, hand, thumb, finger, leg, foot, toe, or phalange.

(10) For disablements resulting in total permanent disability, the amount payable for impairment or five hundred (500) weeks of compensation, whichever is greater.

(11) For any permanent reduction of the sight of an eye less than a total loss as specified in subdivision (5), the compensation shall be paid in an amount proportionate to the degree of a permanent reduction without correction or glasses. However, when a permanent reduction without correction or glasses would result in one hundred percent (100%) loss of vision, then compensation shall be paid for fifty percent (50%) of the total loss of vision without glasses, plus an additional amount equal to the proportionate amount of the reduction with glasses, not to exceed an additional fifty percent (50%).

(12) For any permanent reduction of the hearing of one (1) or both ears, less than the total loss as specified in subdivision (6), compensation shall be paid in an amount proportionate to the degree of a permanent reduction.

(13) In all other cases of permanent partial impairment, compensation proportionate to the degree of a permanent partial impairment, in the discretion of the worker's compensation board, not exceeding one hundred (100) degrees of permanent impairment.

(14) In all cases of permanent disfigurement which may impair the future usefulness or opportunities of the employee, compensation, in the discretion of the worker's compensation board, not exceeding forty (40) degrees of permanent impairment except that no compensation shall be payable under this subdivision where compensation is payable elsewhere in this section.

~~(h)~~ **(l)** With respect to disablements occurring on and after July 1, 1991, compensation for permanent partial impairment shall be paid according to the degree of permanent impairment for the disablement determined under subsection ~~(d)~~ **(k)** and the following:

(1) With respect to disablements occurring on and after July 1, 1991, and before July 1, 1992, for each degree of permanent impairment from one (1) to thirty-five (35), five hundred dollars (\$500) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), nine hundred dollars (\$900) per degree; for each degree of permanent impairment above fifty (50), one thousand five hundred dollars (\$1,500) per degree.

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(2) With respect to disablements occurring on and after July 1, 1992, and before July 1, 1993, for each degree of permanent impairment from one (1) to twenty (20), five hundred dollars (\$500) per degree; for each degree of permanent impairment from twenty-one (21) to thirty-five (35), eight hundred dollars (\$800) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), one thousand three hundred dollars (\$1,300) per degree; for each degree of permanent impairment above fifty (50), one thousand seven hundred dollars (\$1,700) per degree.

(3) With respect to disablements occurring on and after July 1, 1993, and before July 1, 1997, for each degree of permanent impairment from one (1) to ten (10), five hundred dollars (\$500) per degree; for each degree of permanent impairment from eleven (11) to twenty (20), seven hundred dollars (\$700) per degree; for each degree of permanent impairment from twenty-one (21) to thirty-five (35), one thousand dollars (\$1,000) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), one thousand four hundred dollars (\$1,400) per degree; for each degree of permanent impairment above fifty (50), one thousand seven hundred dollars (\$1,700) per degree.

(4) With respect to disablements occurring on and after July 1, 1997, and before July 1, 1998, for each degree of permanent impairment from one (1) to ten (10), seven hundred fifty dollars (\$750) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), one thousand dollars (\$1,000) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), one thousand four hundred dollars (\$1,400) per degree; for each degree of permanent impairment above fifty (50), one thousand seven hundred dollars (\$1,700) per degree.

(5) With respect to disablements occurring on and after July 1, 1998, and before July 1, 1999, for each degree of permanent impairment from one (1) to ten (10), seven hundred fifty dollars (\$750) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), one thousand dollars (\$1,000) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), one thousand four hundred dollars (\$1,400) per degree; for each degree of permanent impairment above fifty (50), one thousand seven hundred dollars (\$1,700) per degree.

(6) With respect to disablements occurring on and after July 1, 1999, and before July 1, 2000, for each degree of permanent impairment from one (1) to ten (10), nine hundred dollars (\$900)

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per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), one thousand one hundred dollars (\$1,100) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), one thousand six hundred dollars (\$1,600) per degree; for each degree of permanent impairment above fifty (50), two thousand dollars (\$2,000) per degree.

(7) With respect to disablements occurring on and after July 1, 2000, and before July 1, 2001, for each degree of permanent impairment from one (1) to ten (10), one thousand one hundred dollars (\$1,100) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), one thousand three hundred dollars (\$1,300) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), two thousand dollars (\$2,000) per degree; for each degree of permanent impairment above fifty (50), two thousand five hundred fifty dollars (\$2,500) per degree.

(8) With respect to disablements occurring on and after July 1, 2001, for each degree of permanent impairment from one (1) to ten (10), one thousand three hundred dollars (\$1,300) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), one thousand five hundred dollars (\$1,500) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), two thousand four hundred dollars (\$2,400) per degree; for each degree of permanent impairment above fifty (50), three thousand dollars (\$3,000) per degree.

(i) **(m)** The average weekly wages used in the determination of compensation for permanent partial impairment under subsections ~~(g)~~ **(k)** and ~~(h)~~ **(l)** shall not exceed the following:

(1) With respect to disablements occurring on or after July 1, 1991, and before July 1, 1992, four hundred ninety-two dollars (\$492).

(2) With respect to disablements occurring on or after July 1, 1992, and before July 1, 1993, five hundred forty dollars (\$540).

(3) With respect to disablements occurring on or after July 1, 1993, and before July 1, 1994, five hundred ninety-one dollars (\$591).

(4) With respect to disablements occurring on or after July 1, 1994, and before July 1, 1997, six hundred forty-two dollars (\$642).

(5) With respect to disablements occurring on or after July 1, 1997, and before July 1, 1998, six hundred seventy-two dollars (\$672).

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(6) With respect to disablements occurring on or after July 1, 1998, and before July 1, 1999, seven hundred two dollars (\$702).

(7) With respect to disablements occurring on or after July 1, 1999, and before July 1, 2000, seven hundred thirty-two dollars (\$732).

(8) With respect to disablements occurring on or after July 1, 2000, and before July 1, 2001, seven hundred sixty-two dollars (\$762).

(9) With respect to injuries occurring on or after July 1, 2001, and before July 1, 2002, eight hundred twenty-two dollars (\$822).

(10) With respect to injuries occurring on or after July 1, 2002, **and before July 1, 2005**, eight hundred eighty-two dollars (\$882).

**(11) With respect to injuries occurring on or after July 1, 2005, and before July 1, 2006, nine hundred dollars (\$900).**

**(12) With respect to injuries occurring on or after July 1, 2006, nine hundred thirty dollars (\$930).**

~~(j)~~ **(n)** If any employee, only partially disabled, refuses employment suitable to ~~his~~ **the employee's** capacity procured for ~~him~~, ~~he~~ **the employee, the employee** shall not be entitled to any compensation at any time during the continuance of such refusal unless, in the opinion of the worker's compensation board, such refusal was justifiable. The employee must be served with a notice setting forth the consequences of the refusal under this subsection. The notice must be in a form prescribed by the worker's compensation board.

~~(k)~~ **(o)** If an employee has sustained a permanent impairment or disability from an accidental injury other than an occupational disease in another employment than that in which ~~he~~ **the employee** suffered a subsequent disability from an occupational disease, such as herein specified, the employee shall be entitled to compensation for the subsequent disability in the same amount as if the previous impairment or disability had not occurred. However, if the permanent impairment or disability resulting from an occupational disease for which compensation is claimed results only in the aggravation or increase of a previously sustained permanent impairment from an occupational disease or physical condition regardless of the source or cause of such previously sustained impairment from an occupational disease or physical condition, the board shall determine the extent of the previously sustained permanent impairment from an occupational disease or physical condition as well as the extent of the aggravation or increase resulting from the subsequent permanent impairment or disability, and shall award compensation only for that part of said

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1 occupational disease or physical condition resulting from the  
 2 subsequent permanent impairment. An amputation of any part of the  
 3 body or loss of any or all of the vision of one (1) or both eyes caused by  
 4 an occupational disease shall be considered as a permanent impairment  
 5 or physical condition.

6 ~~(t)~~ **(p)** If an employee suffers a disablement from occupational  
 7 disease for which compensation is payable while the employee is still  
 8 receiving or entitled to compensation for a previous injury by accident  
 9 or disability by occupational disease in the same employment, ~~he~~ **the**  
 10 **employee** shall not at the same time be entitled to compensation for  
 11 both, unless it be for a permanent injury, such as specified in  
 12 subsection ~~(g)(1), (g)(4), (g)(5), (g)(8), or (g)(9); (k)(1), (k)(4), (k)(5),~~  
 13 **(k)(8), or (k)(9)**, but the employee shall be entitled to compensation for  
 14 that disability and from the time of that disability which will cover the  
 15 longest period and the largest amount payable under this chapter.

16 ~~(m)~~ **(q)** If an employee receives a permanent disability from  
 17 occupational disease such as specified in subsection ~~(g)(1), (g)(4),~~  
 18 ~~(g)(5), (g)(8), or (g)(9)~~ **(k)(1), (k)(4), (k)(5), (k)(8), or (k)(9)** after  
 19 having sustained another such permanent disability in the same  
 20 employment the employee shall be entitled to compensation for both  
 21 such disabilities, but the total compensation shall be paid by extending  
 22 the period and not by increasing the amount of weekly compensation  
 23 and, when such previous and subsequent permanent disabilities, in  
 24 combination result in total permanent disability or permanent total  
 25 impairment, compensation shall be payable for such permanent total  
 26 disability or impairment, but payments made for the previous disability  
 27 or impairment shall be deducted from the total payment of  
 28 compensation due.

29 ~~(n)~~ When an employee has been awarded or is entitled to an award  
 30 of compensation for a definite period under this chapter for disability  
 31 from occupational disease, which disablement occurs on and after April  
 32 1, 1951, and prior to April 1, 1963, and such employee dies from any  
 33 other cause than such occupational disease, payment of the unpaid  
 34 balance of such compensation, not exceeding three hundred (300)  
 35 weeks, shall be made to the employee's dependents of the second and  
 36 third class as defined in sections 11 through 14 of this chapter, and  
 37 compensation, not exceeding five hundred (500) weeks, shall be made  
 38 to the employee's dependents of the first class as defined in sections 11  
 39 through 14 of this chapter. **(r)** When an employee has been awarded or  
 40 is entitled to an award of compensation for a definite period from an  
 41 occupational disease wherein disablement occurs on and after April 1,  
 42 1963, and such employee dies from other causes than such

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1 occupational disease, payment of the unpaid balance of such  
 2 compensation not exceeding three hundred fifty (350) weeks shall be  
 3 paid to the employee's dependents of the second and third class as  
 4 defined in sections 11 through 14 of this chapter and compensation, not  
 5 exceeding five hundred (500) weeks shall be made to the employee's  
 6 dependents of the first class as defined in sections 11 through 14 of this  
 7 chapter.

8 ~~(o)~~ (s) Any payment made by the employer to the employee during  
 9 the period of the employee's disability, or to the employee's dependents,  
 10 which, by the terms of this chapter, was not due and payable when  
 11 made, may, subject to the approval of the worker's compensation board,  
 12 be deducted from the amount to be paid as compensation, but such  
 13 deduction shall be made from the distal end of the period during which  
 14 compensation must be paid, except in cases of temporary disability.

15 ~~(p)~~ (t) When so provided in the compensation agreement or in the  
 16 award of the worker's compensation board, compensation may be paid  
 17 semimonthly, or monthly, instead of weekly.

18 ~~(q)~~ (u) When the aggregate payments of compensation awarded by  
 19 agreement or upon hearing to an employee or dependent under eighteen  
 20 (18) years of age do not exceed one hundred dollars (\$100), the  
 21 payment thereof may be made directly to such employee or dependent,  
 22 except when the worker's compensation board shall order otherwise.

23 (v) Whenever the aggregate payments of compensation, due to any  
 24 person under eighteen (18) years of age, exceed one hundred dollars  
 25 (\$100), the payment thereof shall be made to a trustee, appointed by the  
 26 circuit or superior court, or to a duly qualified guardian, or, upon the  
 27 order of the worker's compensation board, to a parent or to such minor  
 28 person. The payment of compensation, due to any person eighteen (18)  
 29 years of age or over, may be made directly to such person.

30 ~~(r)~~ (w) If an employee, or a dependent, is mentally incompetent, or  
 31 a minor at the time when any right or privilege accrues to the employee  
 32 under this chapter, the employee's guardian or trustee may, in the  
 33 employee's behalf, claim and exercise such right and privilege.

34 ~~(s)~~ (x) All compensation payments named and provided for in this  
 35 section, shall mean and be defined to be for only such occupational  
 36 diseases and disabilities therefrom as are proved by competent  
 37 evidence, of which there are or have been objective conditions or  
 38 symptoms proven, not within the physical or mental control of the  
 39 employee. ~~himself.~~

40 SECTION 12. IC 22-3-7-17 IS AMENDED TO READ AS  
 41 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 17. (a) During the  
 42 period of disablement, the employer shall furnish or cause to be

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1 furnished, free of charge to the employee, an attending physician for  
 2 the treatment of ~~his~~ **the employee's** occupational disease, and in  
 3 addition thereto such surgical, hospital, and nursing services and  
 4 supplies as the attending physician or the worker's compensation board  
 5 may deem necessary. If the employee is requested or required by the  
 6 employer to submit to treatment outside the county of employment, the  
 7 employer shall also pay the reasonable expense of travel, food, and  
 8 lodging necessary during the travel, but not to exceed the amount paid  
 9 at the time of the travel by the state of ~~Indiana~~ to its employees. If the  
 10 treatment or travel to or from the place of treatment causes a loss of  
 11 working time to the employee, the employer shall reimburse the  
 12 employee for the loss of wages using the basis of the employee's  
 13 average daily wage.

14 (b) During the period of disablement resulting from the occupational  
 15 disease, the employer shall furnish such physician, services, and  
 16 supplies, and the worker's compensation board may, on proper  
 17 application of either party, require that treatment by such physician and  
 18 such services and supplies be furnished by or on behalf of the employer  
 19 as the board may deem reasonably necessary. After an employee's  
 20 occupational disease has been adjudicated by agreement or award on  
 21 the basis of permanent partial impairment and within the statutory  
 22 period for review in such case as provided in section 27(i) of this  
 23 chapter, the employer may continue to furnish a physician or a surgeon  
 24 and other medical services and supplies, and the board may, within  
 25 such statutory period for review as provided in section 27(i) of this  
 26 chapter, on a proper application of either party, require that treatment  
 27 by such physician or surgeon and such services and supplies be  
 28 furnished by and on behalf of the employer as the board may deem  
 29 necessary to limit or reduce the amount and extent of such impairment.  
 30 The refusal of the employee to accept such services and supplies when  
 31 so provided by or on behalf of the employer, shall bar the employee  
 32 from all compensation otherwise payable during the period of such  
 33 refusal and ~~his~~ **the employee's** right to prosecute any proceeding under  
 34 this chapter shall be suspended and abated until such refusal ceases.  
 35 The employee must be served with a notice setting forth the  
 36 consequences of the refusal under this section. The notice must be in  
 37 a form prescribed by the worker's compensation board. No  
 38 compensation for permanent total impairment, permanent partial  
 39 impairment, permanent disfigurement, or death shall be paid or payable  
 40 for that part or portion of such impairment, disfigurement, or death  
 41 which is the result of the failure of such employee to accept such  
 42 treatment, services, and supplies, provided that an employer may at any

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time permit an employee to have treatment for ~~his~~ **the employee's** disease or injury by spiritual means or prayer in lieu of such physician, services, and supplies.

(c) Regardless of when it occurs, where a compensable occupational disease results in the amputation of a body part, the enucleation of an eye, or the loss of natural teeth, the employer shall furnish an appropriate artificial member, braces, and prosthodontics. The cost of repairs to or replacements for the artificial members, braces, or prosthodontics that result from a compensable occupational disease pursuant to a prior award and are required due to either medical necessity or normal wear and tear, determined according to the employee's individual use, but not abuse, of the artificial member, braces, or prosthodontics, shall be paid from the second injury fund upon order or award of the worker's compensation board. The employee is not required to meet any other requirement for admission to the second injury fund.

(d) If an emergency or because of the employer's failure to provide such attending physician or such surgical, hospital, or nurse's services and supplies or such treatment by spiritual means or prayer as specified in this section, ~~or for other good reason,~~ a physician other than that provided by the employer treats the diseased employee within the period of disability, or necessary and proper surgical, hospital, or nurse's services and supplies are procured within the period, the reasonable cost of such services and supplies shall, subject to approval of the worker's compensation board, be paid by the employer.

(e) This section may not be construed to prohibit an agreement between an employer and employees that has the approval of the board and that:

(1) binds the parties to medical care furnished by providers selected by agreement before or after disablement; or

(2) makes the findings of a provider chosen in this manner binding upon the parties.

(f) The employee and the employee's estate do not have liability to a health care provider for payment for services obtained under this section. The right to order payment for all services provided under this chapter is solely with the board. All claims by a health care provider for payment for services are against the employer and the employer's insurance carrier, if any, and must be made with the board under this chapter.

SECTION 13. IC 22-3-7-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 19. ~~(a) In computing compensation for temporary total disability, temporary partial~~

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disability; and total permanent disability under this law with respect to occupational diseases occurring:

(1) on and after July 1, 1974; and before July 1, 1976; the average weekly wages shall be considered to be:

(A) not more than one hundred thirty-five dollars (\$135); and

(B) not less than seventy-five dollars (\$75);

(2) on and after July 1, 1976; and before July 1, 1977; the average weekly wages shall be considered to be:

(A) not more than one hundred fifty-six dollars (\$156); and

(B) not less than seventy-five dollars (\$75);

(3) on and after July 1, 1977; and before July 1, 1979; the average weekly wages are considered to be:

(A) not more than one hundred eighty dollars (\$180); and

(B) not less than seventy-five dollars (\$75);

(4) on and after July 1, 1979; and before July 1, 1980; the average weekly wages are considered to be:

(A) not more than one hundred ninety-five dollars (\$195); and

(B) not less than seventy-five dollars (\$75);

(5) on and after July 1, 1980; and before July 1, 1983; the average weekly wages are considered to be:

(A) not more than two hundred ten dollars (\$210); and

(B) not less than seventy-five dollars (\$75);

(6) on and after July 1, 1983; and before July 1, 1984; the average weekly wages are considered to be:

(A) not more than two hundred thirty-four dollars (\$234); and

(B) not less than seventy-five dollars (\$75); and

(7) on and after July 1, 1984; and before July 1, 1985; the average weekly wages are considered to be:

(A) not more than two hundred forty-nine dollars (\$249); and

(B) not less than seventy-five dollars (\$75);

(b) (a) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to occupational diseases occurring on and after July 1, 1985, and before July 1, 1986, the average weekly wages are considered to be:

(1) not more than two hundred sixty-seven dollars (\$267); and

(2) not less than seventy-five dollars (\$75).

(c) (b) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to occupational diseases occurring on and after July 1, 1986, and before July 1, 1988, the average weekly wages are considered to be:

(1) not more than two hundred eighty-five dollars (\$285); and

(2) not less than seventy-five dollars (\$75).

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~~(d)~~ (c) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to occupational diseases occurring on and after July 1, 1988, and before July 1, 1989, the average weekly wages are considered to be:

- (1) not more than three hundred eighty-four dollars (\$384); and
- (2) not less than seventy-five dollars (\$75).

~~(e)~~ (d) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to occupational diseases occurring on and after July 1, 1989, and before July 1, 1990, the average weekly wages are considered to be:

- (1) not more than four hundred eleven dollars (\$411); and
- (2) not less than seventy-five dollars (\$75).

~~(f)~~ (e) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to occupational diseases occurring on and after July 1, 1990, and before July 1, 1991, the average weekly wages are considered to be:

- (1) not more than four hundred forty-one dollars (\$441); and
- (2) not less than seventy-five dollars (\$75).

~~(g)~~ (f) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to occupational diseases occurring on and after July 1, 1991, and before July 1, 1992, the average weekly wages are considered to be:

- (1) not more than four hundred ninety-two dollars (\$492); and
- (2) not less than seventy-five dollars (\$75).

~~(h)~~ (g) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to occupational diseases occurring on and after July 1, 1992, and before July 1, 1993, the average weekly wages are considered to be:

- (1) not more than five hundred forty dollars (\$540); and
- (2) not less than seventy-five dollars (\$75).

~~(i)~~ (h) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to occupational diseases occurring on and after July 1, 1993, and before July 1, 1994, the average weekly wages are considered to be:

- (1) not more than five hundred ninety-one dollars (\$591); and
- (2) not less than seventy-five dollars (\$75).

~~(j)~~ (i) In computing compensation for temporary total disability, temporary partial disability and total permanent disability, with respect to occupational diseases occurring on and after July 1, 1994, and before July 1, 1997, the average weekly wages are considered to be:

- (1) not more than six hundred forty-two dollars (\$642); and
- (2) not less than seventy-five dollars (\$75).

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~~(k)~~ (j) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, the average weekly wages are considered to be:

(1) with respect to occupational diseases occurring on and after July 1, 1997, and before July 1, 1998:

(A) not more than six hundred seventy-two dollars (\$672); and

(B) not less than seventy-five dollars (\$75);

(2) with respect to occupational diseases occurring on and after July 1, 1998, and before July 1, 1999:

(A) not more than seven hundred two dollars (\$702); and

(B) not less than seventy-five dollars (\$75);

(3) with respect to occupational diseases occurring on and after July 1, 1999, and before July 1, 2000:

(A) not more than seven hundred thirty-two dollars (\$732); and

(B) not less than seventy-five dollars (\$75);

(4) with respect to occupational diseases occurring on and after July 1, 2000, and before July 1, 2001:

(A) not more than seven hundred sixty-two dollars (\$762); and

(B) not less than seventy-five dollars (\$75);

(5) with respect to disablements occurring on and after July 1, 2001, and before July 1, 2002:

(A) not more than eight hundred twenty-two dollars (\$822); and

(B) not less than seventy-five dollars (\$75); ~~and~~

(6) with respect to disablements occurring on and after July 1, 2002, **and before July 1, 2005:**

(A) not more than eight hundred eighty-two dollars (\$882); and

(B) not less than seventy-five dollars (\$75);

**(7) with respect to disablements occurring on and after July 1, 2005, and before July 1, 2006:**

(A) not more than nine hundred dollars (\$900); and

(B) not less than seventy-five dollars (\$75); and

**(8) with respect to disablements occurring on and after July 1, 2006:**

(A) not more than nine hundred thirty dollars (\$930); and

(B) not less than seventy-five dollars. (\$75).

~~(i)~~ The maximum compensation that shall be paid for occupational disease and its results under any one (1) or more provisions of this chapter with respect to disability or death occurring:

~~(1) on and after July 1, 1974; and before July 1, 1976; shall not~~

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1 exceed forty-five thousand dollars (\$45,000) in any case;  
 2 (2) on and after July 1, 1976; and before July 1, 1977; shall not  
 3 exceed fifty-two thousand dollars (\$52,000) in any case;  
 4 (3) on and after July 1, 1977; and before July 1, 1979; may not  
 5 exceed sixty thousand dollars (\$60,000) in any case;  
 6 (4) on and after July 1, 1979; and before July 1, 1980; may not  
 7 exceed sixty-five thousand dollars (\$65,000) in any case;  
 8 (5) on and after July 1, 1980; and before July 1, 1983; may not  
 9 exceed seventy thousand dollars (\$70,000) in any case;  
 10 (6) on and after July 1, 1983; and before July 1, 1984; may not  
 11 exceed seventy-eight thousand dollars (\$78,000) in any case; and  
 12 (7) on and after July 1, 1984; and before July 1, 1985; may not  
 13 exceed eighty-three thousand dollars (\$83,000) in any case.

14 ~~(m)~~ (k) The maximum compensation with respect to disability or  
 15 death occurring on and after July 1, 1985, and before July 1, 1986,  
 16 which shall be paid for occupational disease and the results thereof  
 17 under the provisions of this chapter or under any combination of its  
 18 provisions may not exceed eighty-nine thousand dollars (\$89,000) in  
 19 any case.

20 (l) The maximum compensation with respect to disability or death  
 21 occurring on and after July 1, 1986, and before July 1, 1988, which  
 22 shall be paid for occupational disease and the results thereof under the  
 23 provisions of this chapter or under any combination of its provisions  
 24 may not exceed ninety-five thousand dollars (\$95,000) in any case.

25 (m) The maximum compensation with respect to disability or death  
 26 occurring on and after July 1, 1988, and before July 1, 1989, that shall  
 27 be paid for occupational disease and the results thereof under this  
 28 chapter or under any combination of its provisions may not exceed one  
 29 hundred twenty-eight thousand dollars (\$128,000) in any case.

30 (n) The maximum compensation with respect to disability or death  
 31 occurring on and after July 1, 1989, and before July 1, 1990, that shall  
 32 be paid for occupational disease and the results thereof under this  
 33 chapter or under any combination of its provisions may not exceed one  
 34 hundred thirty-seven thousand dollars (\$137,000) in any case.

35 (o) The maximum compensation with respect to disability or death  
 36 occurring on and after July 1, 1990, and before July 1, 1991, that shall  
 37 be paid for occupational disease and the results thereof under this  
 38 chapter or under any combination of its provisions may not exceed one  
 39 hundred forty-seven thousand dollars (\$147,000) in any case.

40 (p) The maximum compensation with respect to disability or death  
 41 occurring on and after July 1, 1991, and before July 1, 1992, that shall  
 42 be paid for occupational disease and the results thereof under this

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chapter or under any combination of the provisions of this chapter may not exceed one hundred sixty-four thousand dollars (\$164,000) in any case.

(q) The maximum compensation with respect to disability or death occurring on and after July 1, 1992, and before July 1, 1993, that shall be paid for occupational disease and the results thereof under this chapter or under any combination of the provisions of this chapter may not exceed one hundred eighty thousand dollars (\$180,000) in any case.

(r) The maximum compensation with respect to disability or death occurring on and after July 1, 1993, and before July 1, 1994, that shall be paid for occupational disease and the results thereof under this chapter or under any combination of the provisions of this chapter may not exceed one hundred ninety-seven thousand dollars (\$197,000) in any case.

(s) The maximum compensation with respect to disability or death occurring on and after July 1, 1994, and before July 1, 1997, that shall be paid for occupational disease and the results thereof under this chapter or under any combination of the provisions of this chapter may not exceed two hundred fourteen thousand dollars (\$214,000) in any case.

(t) The maximum compensation that shall be paid for occupational disease and the results of an occupational disease under this chapter or under any combination of the provisions of this chapter may not exceed the following amounts in any case:

(1) With respect to disability or death occurring on and after July 1, 1997, and before July 1, 1998, two hundred twenty-four thousand dollars (\$224,000).

(2) With respect to disability or death occurring on and after July 1, 1998, and before July 1, 1999, two hundred thirty-four thousand dollars (\$234,000).

(3) With respect to disability or death occurring on and after July 1, 1999, and before July 1, 2000, two hundred forty-four thousand dollars (\$244,000).

(4) With respect to disability or death occurring on and after July 1, 2000, and before July 1, 2001, two hundred fifty-four thousand dollars (\$254,000).

(5) With respect to disability or death occurring on and after July 1, 2001, and before July 1, 2002, two hundred seventy-four thousand dollars (\$274,000).

(6) With respect to disability or death occurring on and after July 1, 2002, **and before July 1, 2005**, two hundred ninety-four thousand dollars (\$294,000).

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(7) With respect to disability or death occurring on and after July 1, 2005, and before July 1, 2006, three hundred thousand dollars (\$300,000).

(8) With respect to disability or death occurring on and after July 1, 2006, three hundred ten thousand dollars (\$310,000).

(u) For all disabilities occurring before July 1, 1985, "average weekly wages" shall mean the earnings of the injured employee in the employment in which the employee was working at the time of the last exposure during the period of fifty-two (52) weeks immediately preceding the last day of the last exposure divided by fifty-two (52). If the employee lost seven (7) or more calendar days during the period, although not in the same week, then the earnings for the remainder of the fifty-two (52) weeks shall be divided by the number of weeks and parts thereof remaining after the time lost has been deducted. Where the employment prior to the last day of the last exposure extended over a period of less than fifty-two (52) weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee earned wages shall be followed if results just and fair to both parties will be obtained. Where by reason of the shortness of the time during which the employee has been in the employment of the employer or of the casual nature or terms of the employment it is impracticable to compute the average weekly wages as above defined, regard shall be had to the average weekly amount which, during the fifty-two (52) weeks previous to the last day of the last exposure, was being earned by a person in the same grade employed at the same work by the same employer, or if there is no person so employed, by a person in the same grade employed in that same class of employment in the same district. Whenever allowances of any character are made to an employee in lieu of wages or a specified part of the wage contract, they shall be deemed a part of the employee's earnings.

(v) (u) For all disabilities occurring on and after July 1, 1985, "average weekly wages" means the earnings of the injured employee during the period of fifty-two (52) weeks immediately preceding the disability divided by fifty-two (52). If the employee lost seven (7) or more calendar days during the period, although not in the same week, then the earnings for the remainder of the fifty-two (52) weeks shall be divided by the number of weeks and parts of weeks remaining after the time lost has been deducted. If employment before the date of disability extended over a period of less than fifty-two (52) weeks, the method of dividing the earnings during that period by the number of weeks and parts of weeks during which the employee earned wages shall be

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1 followed if results just and fair to both parties will be obtained. If by  
 2 reason of the shortness of the time during which the employee has been  
 3 in the employment of the employer or of the casual nature or terms of  
 4 the employment it is impracticable to compute the average weekly  
 5 wages for the employee, the employee's average weekly wages shall be  
 6 considered to be the average weekly amount that, during the fifty-two  
 7 (52) weeks before the date of disability, was being earned by a person  
 8 in the same grade employed at the same work by the same employer or,  
 9 if there is no person so employed, by a person in the same grade  
 10 employed in that same class of employment in the same district.  
 11 Whenever allowances of any character are made to an employee  
 12 instead of wages or a specified part of the wage contract, they shall be  
 13 considered a part of the employee's earnings.

14 ~~(w)~~ (v) The provisions of this article may not be construed to result  
 15 in an award of benefits in which the number of weeks paid or to be paid  
 16 for temporary total disability, temporary partial disability, or permanent  
 17 total disability benefits combined exceeds five hundred (500) weeks.  
 18 This section shall not be construed to prevent a person from applying  
 19 for an award under IC 22-3-3-13. However, in case of permanent total  
 20 disability resulting from a disablement occurring on or after January 1,  
 21 1998, the minimum total benefit shall not be less than seventy-five  
 22 thousand dollars (\$75,000).

23 SECTION 14. IC 22-3-7-27 IS AMENDED TO READ AS  
 24 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 27. (a) If the employer  
 25 and the employee or the employee's dependents disagree in regard to  
 26 the compensation payable under this chapter, or, if they have reached  
 27 such an agreement, which has been signed by them, filed with and  
 28 approved by the worker's compensation board, and afterward disagree  
 29 as to the continuance of payments under such agreement, or as to the  
 30 period for which payments shall be made, or as to the amount to be  
 31 paid, because of a change in conditions since the making of such  
 32 agreement, either party may then make an application to the board for  
 33 the determination of the matters in dispute. When compensation which  
 34 is payable in accordance with an award or by agreement approved by  
 35 the board is ordered paid in a lump sum by the board, no review shall  
 36 be had as in this subsection mentioned.

37 (b) The application making claim for compensation filed with the  
 38 worker's compensation board shall state the following:

- 39 (1) The approximate date of the last day of the last exposure and  
 40 the approximate date of the disablement.
- 41 (2) The general nature and character of the illness or disease  
 42 claimed.

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(3) The name and address of the employer by whom employed on the last day of the last exposure, and if employed by any other employer after such last exposure and before disablement, the name and address of such other employer or employers.

(4) In case of death, the date and place of death.

(5) Amendments to applications making claim for compensation which relate to the same disablement or disablement resulting in death originally claimed upon may be allowed by the board in its discretion, and, in the exercise of such discretion, it may, in proper cases, order a trial de novo. Such amendment shall relate back to the date of the filing of the original application so amended.

(c) Upon the filing of such application, the board shall set the date of hearing, which shall be as early as practicable, and shall notify the parties, in the manner prescribed by the board, of the time and place of hearing. The hearing of all claims for compensation on account of occupational disease shall be held in the county in which the last exposure occurred or in any adjoining county, except when the parties consent to a hearing elsewhere. Claims assigned to an individual board member that are considered to be of an emergency nature by that board member, may be heard in any county within the board member's jurisdiction.

(d) The board by any or all of its members shall hear the parties at issue, their representatives, and witnesses, and shall determine the dispute in a summary manner. The award shall be filed with the record of proceedings, and a copy thereof shall immediately be sent by registered mail to each of the parties in dispute.

(e) If an application for review is made to the board within thirty (30) days from the date of the award made by less than all the members, the full board, if the first hearing was not held before the full board, shall review the evidence, or, if deemed advisable, hear the parties at issue, their representatives, and witnesses as soon as practicable, and shall make an award and file the same with the finding of the facts on which it is based and send a copy thereof to each of the parties in dispute, in like manner as specified in subsection (d).

(f) An award of the board by less than all of the members as provided in this section, if not reviewed as provided in this section, shall be final and conclusive. An award by the full board shall be conclusive and binding unless either party to the dispute, within thirty (30) days after receiving a copy of such award, appeals to the court of appeals under the same terms and conditions as govern appeals in ordinary civil actions. The court of appeals shall have jurisdiction to

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1 review all questions of law and of fact. The board, of its own motion,  
 2 may certify questions of law to the court of appeals for its decision and  
 3 determination. An assignment of errors that the award of the full board  
 4 is contrary to law shall be sufficient to present both the sufficiency of  
 5 the facts found to sustain the award and the sufficiency of the evidence  
 6 to sustain the finding of facts. All such appeals and certified questions  
 7 of law shall be submitted upon the date filed in the court of appeals,  
 8 shall be advanced upon the docket of the court, and shall be determined  
 9 at the earliest practicable date, without any extensions of time for filing  
 10 briefs. An award of the full board affirmed on appeal, by the employer,  
 11 shall be increased thereby five percent (5%), and by order of the court  
 12 may be increased ten percent (10%).

13 (g) Upon order of the worker's compensation board made after five  
 14 (5) days notice is given to the opposite party, any party in interest may  
 15 file in the circuit or superior court of the county in which the  
 16 disablement occurred a certified copy of the memorandum of  
 17 agreement, approved by the board, or of an order or decision of the  
 18 board, or of an award of the full board unappealed from, or of an award  
 19 of the full board affirmed upon an appeal, whereupon the court shall  
 20 render judgment in accordance therewith and notify the parties. Such  
 21 judgment shall have the same effect and all proceedings in relation  
 22 thereto shall thereafter be the same as though such judgment has been  
 23 rendered in a suit duly heard and determined by the court. Any such  
 24 judgment of such circuit or superior court, unappealed from or affirmed  
 25 on appeal or modified in obedience to the mandate of the court of  
 26 appeals, shall be modified to conform to any decision of the industrial  
 27 board ending, diminishing, or increasing any weekly payment under the  
 28 provisions of subsection (i) upon the presentation to it of a certified  
 29 copy of such decision.

30 (h) In all proceedings before the worker's compensation board or in  
 31 a court under the compensation provisions of this chapter, the costs  
 32 shall be awarded and taxed as provided by law in ordinary civil actions  
 33 in the circuit court.

34 (i) The power and jurisdiction of the worker's compensation board  
 35 over each case shall be continuing, and, from time to time, it may, upon  
 36 its own motion or upon the application of either party on account of a  
 37 change in conditions, make such modification or change in the award  
 38 ending, lessening, continuing, or extending the payments previously  
 39 awarded, either by agreement or upon hearing, as it may deem just,  
 40 subject to the maximum and minimum provided for in this chapter.  
 41 When compensation which is payable in accordance with an award or  
 42 settlement contract approved by the board is ordered paid in a lump

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sum by the board, no review shall be had as in this subsection mentioned. Upon making any such change, the board shall immediately send to each of the parties a copy of the modified award. No such modification shall affect the previous award as to any money paid thereunder. The board shall not make any such modification upon its own motion, nor shall any application therefor be filed by either party after the expiration of two (2) years from the **latest of the following:**

(1) **The last day for which compensation was paid under the original award made either by agreement or upon hearing, except that applications for increased permanent partial impairment are barred unless filed within one (1) year from the last day for which compensation was paid for:**

(A) **temporary total disability;**

(B) **permanent partial impairment; or**

(C) **permanent total disability.**

(2) **The date of an award for:**

(A) **temporary total disability;**

(B) **permanent partial impairment; or**

(C) **permanent total disability.**

(3) **The last day that medical services under section 17 of this chapter were provided to the employee.**

The board may at any time correct any clerical error in any finding or award.

(j) The board or any member thereof may, upon the application of either party or upon its own motion, appoint a disinterested and duly qualified physician or surgeon to make any necessary medical examination of the employee and to testify in respect thereto. Such physician or surgeon shall be allowed traveling expenses and a reasonable fee, to be fixed by the board. The fees and expenses of such physician or surgeon shall be paid by the state only on special order of the board or a member thereof.

(k) The board or any member thereof may, upon the application of either party or upon its own motion, appoint a disinterested and duly qualified industrial hygienist, industrial engineer, industrial physician, or chemist to make any necessary investigation of the occupation in which the employee alleges that he was last exposed to the hazards of the occupational disease claimed upon, and testify with respect to the occupational disease health hazards found by such person or persons to exist in such occupation. Such person or persons shall be allowed traveling expenses and a reasonable fee, to be fixed by the board. The fees and expenses of such persons shall be paid by the state, only on special order of the board or a member thereof.

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(l) Whenever any claimant misconceives the claimant's remedy and files an application for adjustment of a claim under IC 22-3-2 through IC 22-3-6 and it is subsequently discovered, at any time before the final disposition of such cause, that the claim for injury or death which was the basis for such application should properly have been made under the provisions of this chapter, then the application so filed under IC 22-3-2 through IC 22-3-6 may be amended in form or substance or both to assert a claim for such disability or death under the provisions of this chapter, and it shall be deemed to have been so filed as amended on the date of the original filing thereof, and such compensation may be awarded as is warranted by the whole evidence pursuant to the provisions of this chapter. When such amendment is submitted, further or additional evidence may be heard by the worker's compensation board when deemed necessary. Nothing in this section contained shall be construed to be or permit a waiver of any of the provisions of this chapter with reference to notice or time for filing a claim, but notice of filing of a claim, if given or done, shall be deemed to be a notice or filing of a claim under the provisions of this chapter if given or done within the time required in this chapter.

SECTION 15. IC 27-1-20-35 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 35. (a) For purposes of this section, the following is not considered to be ownership, control, or operation of the insurer:**

- (1) Membership in a mutual company.
- (2) Subscribership in a reciprocal insurer.
- (3) Ownership of stock of an insurer by the alien property custodian or similar official of the United States.
- (4) Supervision of an insurer by a public insurance supervisory authority.

**(b) A company is not authorized to conduct business in this state if either of the following applies:**

- (1) Voting control or ownership is held in whole or in substantial part by:
  - (A) a government;
  - (B) a governmental agency; or
  - (C) an entity having a tax exemption under:
    - (i) Section 501(c)(27)(B); or
    - (ii) Section 115;
- of the Internal Revenue Code.
- (2) The company is operated for or by:
  - (A) a government;

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- 1           **(B) a governmental agency; or**
- 2           **(C) an entity having a tax exemption under:**
- 3               **(i) Section 501(c)(27)(B); or**
- 4               **(ii) Section 115;**
- 5           **of the Internal Revenue Code.**

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Employment and Labor, to which was referred House Bill 1536, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, delete lines 11 through 24, begin a new paragraph and insert:

"SECTION 2. IC 22-3-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) Every employer and every employee, except as stated in IC 22-3-2 through IC 22-3-6, shall comply with the provisions of IC 22-3-2 through IC 22-3-6 respectively to pay and accept compensation for personal injury or death by accident arising out of and in the course of the employment, and shall be bound thereby. **The burden of proof is on the employee. The proof by the employee of an element of a claim based on personal injury or death by accident does not create a presumption in favor of the employee with regard to another element of the claim.**

(b) IC 22-3-2 through IC 22-3-6 does not apply to railroad employees engaged in train service as:

- (1) engineers;
- (2) firemen;
- (3) conductors;
- (4) brakemen;
- (5) flagmen;
- (6) baggagemen; or
- (7) foremen in charge of yard engines and helpers assigned thereto.

(c) IC 22-3-2 through IC 22-3-6 does not apply to employees of municipal corporations in Indiana who are members of:

- (1) the fire department or police department of any such municipality; and
- (2) a firefighters' pension fund or of a police officers' pension fund.

However, if the common council elects to purchase and procure worker's compensation insurance to insure ~~said~~ employees with respect to medical benefits under IC 22-3-2 through IC 22-3-6, the medical provisions of IC 22-3-2 through IC 22-3-6 apply to members of the fire department or police department of ~~any such~~ a municipal corporation who are also members of a firefighters' pension fund or a police officers' pension fund.

(d) When any municipal corporation purchases or procures worker's

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compensation insurance covering members of the fire department or police department who are also members of a firefighters' pension fund or a police officers' pension fund, and pays the premium or premiums for such insurance, the payment of such premiums is a legal and allowable expenditure of funds of any municipal corporation.

(e) Except as provided in subsection (f), where the common council has procured worker's compensation insurance under this section, ~~any~~ **a** member of ~~such the~~ fire department or police department employed in the city carrying such worker's compensation insurance under this section is limited to recovery of medical and surgical care, medicines, laboratory, curative and palliative agents and means, x-ray, diagnostic and therapeutic services to the extent that ~~such the~~ services are provided for in the worker's compensation policy procured by ~~such the~~ city, and shall not also recover in addition to that policy for ~~such the~~ same benefits provided in IC 36-8-4.

(f) If the medical benefits provided under a worker's compensation policy procured by the common council terminate for any reason before the police officer or firefighter is fully recovered, the common council shall provide medical benefits that are necessary until the police officer or firefighter is no longer in need of medical care.

(g) The provisions of IC 22-3-2 through IC 22-3-6 apply to:

- (1) members of the Indiana general assembly; and
- (2) field examiners of the state board of accounts."

Page 14, between lines 3 and 4, begin a new paragraph and insert:

"SECTION 5. IC 22-3-3-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 13. (a) As used in this section, "board" refers to the worker's compensation board created under IC 22-3-1-1.

(b) If an employee who from any cause, had lost, or lost the use of, one (1) hand, one (1) arm, one (1) foot, one (1) leg, or one (1) eye, and in a subsequent industrial accident becomes permanently and totally disabled by reason of the loss, or loss of use of, another such member or eye, the employer shall be liable only for the compensation payable for such second injury. However, in addition to such compensation and after the completion of the payment therefor, the employee shall be paid the remainder of the compensation that would be due for such total permanent disability out of a special fund known as the second injury fund, and created in the manner described in subsection (c).

(c) Whenever the board determines under the procedures set forth in subsection (d) that an assessment is necessary to ensure that fund beneficiaries, including applicants under section 4(e) of this chapter, continue to receive compensation in a timely manner for a reasonable

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prospective period, the board shall send notice not later than October 1 in any year to:

(1) all insurance carriers and other entities insuring or providing coverage to employers who are or may be liable under this article to pay compensation for personal injuries to or the death of their employees under this article; and

(2) each employer carrying the employer's own risk;

stating that an assessment is necessary. After June 30, 1999, the board may conduct an assessment under this subsection not more than one (1) time annually. ~~Every insurance carrier and other entity insuring or providing coverage to employers who are or may be liable under this article to pay compensation for personal injuries to or death of their employees under this article and every employer carrying the employer's own risk, shall, within thirty (30) days of the board sending notice under this subsection, pay to the worker's compensation board for the benefit of the fund an assessed amount that~~ **The total amount of the assessment** may not exceed two and one-half percent (2.5%) of the total amount of all worker's compensation paid to injured employees or their beneficiaries under IC 22-3-2 through IC 22-3-6 for the calendar year next preceding the due date of such payment. For the purposes of calculating the assessment under this subsection, the board may consider payments for temporary total disability, temporary partial disability, permanent total impairment, permanent partial impairment, or death of an employee. The board may not consider payments for medical benefits in calculating an assessment under this subsection. If the amount to the credit of the second injury fund on or before October 1 of any year exceeds one million dollars (\$1,000,000), the assessment allowed under this subsection shall not be assessed or collected during the ensuing year. But when on or before October 1 of any year the amount to the credit of the fund is less than one million dollars (\$1,000,000), the payments of not more than two and one-half percent (2.5%) of the total amount of all worker's compensation paid to injured employees or their beneficiaries under IC 22-3-2 through IC 22-3-6 for the calendar year next preceding that date shall be resumed and paid into the fund. The board may not use an assessment rate greater than twenty-five hundredths of one percent (0.25%) above the amount recommended by the study performed before the assessment. **The board shall assess all employers for the liabilities, including administrative expenses, of the second injury fund. The total amount of the assessment shall be allocated between self-insured employers and insured employers based on paid losses for the preceding calendar year. The method of assessing self-insured**

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employers shall be based on paid losses. The total amount of assessments allocated to insured employers shall be collected by the insured employers' worker's compensation insurers according to the proportion of each insurer's worker's compensation direct standard premiums during the preceding calendar year in relation to all insurer's worker's compensation direct standard premiums during the preceding calendar year. The portion of the total amount that is collected from self-insured employers is a sum equal to that proportion of the paid losses for the preceding calendar year, which the paid losses of all self-insured employers bore to the total paid losses made by all self-insured employers and insured employers during the preceding calendar year. The portion of the total amount that is collected from insured employers is a sum equal to that proportion of the total paid losses for the preceding calendar year, which the total paid losses on behalf of all insured employers bore to the total paid losses on behalf of all self-insured employers and insured employers during the preceding calendar year. An employer who has ceased to be a self-insurer continues to be liable for assessments based on paid losses made by the employer in the preceding calendar year.

(d) The board shall enter into a contract with an actuary or another qualified firm that has experience in calculating worker's compensation liabilities. Not later than September 1 of each year, the actuary or other qualified firm shall calculate the recommended funding level of the fund based on the previous year's claims and inform the board of the results of the calculation. If the amount to the credit of the fund is less than the amount required under subsection (c), the board may conduct an assessment under subsection (c). The board shall pay the costs of the contract under this subsection with money in the fund.

(e) An assessment collected under subsection (c) on an employer who is not self-insured must be assessed through a surcharge based on the employer's premium. An assessment collected under subsection (c) does not constitute an element of loss, but for the purpose of collection shall be treated as a separate cost imposed upon insured employers. A premium surcharge under this subsection must be collected at the same time and in the same manner in which the premium for coverage is collected, and must be shown as a separate amount on a premium statement. A premium surcharge under this subsection must be excluded from the definition of premium for all purposes, including the computation of insurance producer commissions or premium taxes. However, an insurer may cancel a worker's compensation policy for nonpayment of the premium surcharge. A cancellation under this

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subsection must be carried out under the statutes applicable to the nonpayment of premiums.

(f) The sums shall be paid by the board to the treasurer of state, to be deposited in a special account known as the second injury fund. The funds are not a part of the general fund of the state. Any balance remaining in the account at the end of any fiscal year shall not revert to the general fund. The funds shall be used only for the payment of awards of compensation and expense of medical examinations or treatment made and ordered by the board and chargeable against the fund pursuant to this section, and shall be paid for that purpose by the treasurer of state upon award or order of the board.

(g) If an employee who is entitled to compensation under IC 22-3-2 through IC 22-3-6 either:

- (1) exhausts the maximum benefits under section 22 of this chapter without having received the full amount of award granted to the employee under section 10 of this chapter; or
- (2) exhausts the employee's benefits under section 10 of this chapter;

then such employee may apply to the board, who may award the employee compensation from the second injury fund established by this section, as follows under subsection (h).

(h) An employee who has exhausted the employee's maximum benefits under section 10 of this chapter may be awarded additional compensation equal to sixty-six and two-thirds percent (66 2/3%) of the employee's average weekly wage at the time of the employee's injury, not to exceed the maximum then applicable under section 22 of this chapter, for a period of not to exceed one hundred fifty (150) weeks upon competent evidence sufficient to establish:

- (1) that the employee is totally and permanently disabled from causes and conditions of which there are or have been objective conditions and symptoms proven that are not within the physical or mental control of the employee; and
- (2) that the employee is unable to support the employee in any gainful employment, not associated with rehabilitative or vocational therapy.

(i) The additional award may be renewed during the employee's total and permanent disability after appropriate hearings by the board for successive periods not to exceed one hundred fifty (150) weeks each. The provisions of this section apply only to injuries occurring subsequent to April 1, 1950, for which awards have been or are in the future made by the board under section 10 of this chapter. Section 16 of this chapter does not apply to compensation awarded from the

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second injury fund under this section.

(j) All insurance carriers subject to an assessment under this section are required to provide to the board:

(1) not later than January 31 each calendar year; and

(2) not later than thirty (30) days after a change occurs;

the name, address, and electronic mail address of a representative authorized to receive the notice of an assessment.

SECTION 6. IC 22-3-3-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 21. In ~~all~~ cases of the death of an employee from an injury by an accident arising out of and in the course of the employee's employment under ~~such~~ circumstances that the employee would have been entitled to compensation if death had not resulted, the employer shall pay the burial expenses of ~~such the~~ employee, not exceeding ~~six~~ **seven** thousand **five hundred** dollars ~~(\$6,000)~~ **(\$7,500)**."

Page 21, between lines 35 and 36, begin a new paragraph and insert:

"SECTION 8. IC 22-3-3-27 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 27. (a) The power and jurisdiction of the worker's compensation board over each case shall be continuing and from time to time it may, upon its own motion or upon the application of either party, on account of a change in conditions, make such modification or change in the award ending, lessening, continuing, or extending the payments previously awarded, either by agreement or upon hearing, as it may deem just, subject to the maximum and minimum provided for in IC 22-3-2 through IC 22-3-6.

(b) Upon making any such change, the board shall immediately send to each of the parties a copy of the modified award. No such modification shall affect the previous award as to any money paid thereunder.

(c) The board shall not make any such modification upon its own motion nor shall any application therefor be filed by either party after the expiration of two (2) years from the **latest of the following**:

(1) **The** last day for which compensation was paid under the original award made either by agreement or upon hearing, except that applications for increased permanent partial impairment are barred unless filed within one (1) year from the last day for which compensation was paid **for**:

(A) **temporary total disability;**

(B) **permanent partial impairment; or**

(C) **permanent total disability.**

(2) **The date of an award for:**

(A) **temporary total disability;**

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**(B) permanent partial impairment; or**

**(C) permanent total disability.**

**(3) The last day that medical services under section 4 of this chapter were provided to the employee.**

The board may at any time correct any clerical error in any finding or award.

SECTION 9. IC 22-3-7-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) Every employer and every employee, except as stated in this chapter, shall comply with this chapter, requiring the employer and employee to pay and accept compensation for disablement or death by occupational disease arising out of and in the course of the employment, and shall be bound thereby. **The burden of proof is on the employee. The proof by the employee of an element of a claim based on disablement or death by occupational disease does not create a presumption in favor of the employee with regard to another element of the claim.**

(b) This chapter does not apply to employees of municipal corporations in Indiana who are members of:

(1) the fire department or police department of ~~any such~~ a municipality; and

(2) a firefighters' pension fund or a police officers' pension fund. However, if the common council elects to purchase and procure worker's occupational disease insurance to insure ~~said~~ **the** employees with respect to medical benefits under this chapter, the medical provisions apply to members of the fire department or police department of ~~any such~~ **a** municipal corporation who are also members of a firefighters' pension fund or a police officers' pension fund.

(c) When any municipal corporation purchases or procures worker's occupational disease insurance covering members of the fire department or police department who are also members of a firefighters' pension fund or a police officers' pension fund and pays the premium or premiums for the insurance, the payment of the premiums is a legal and allowable expenditure of funds of any municipal corporation.

(d) Except as provided in subsection (e), where the common council has procured worker's occupational disease insurance as provided under this section, ~~any~~ **a** member of the fire department or police department employed in the city carrying the worker's occupational disease insurance under this section is limited to recovery of medical and surgical care, medicines, laboratory, curative and palliative agents and means, x-ray, diagnostic and therapeutic services to the extent that the services are provided for in the worker's occupational disease

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policy so procured by the city, and may not also recover in addition to that policy for the same benefits provided in IC 36-8-4.

(e) If the medical benefits provided under a worker's occupational disease policy procured by the common council terminate for any reason before the police officer or firefighter is fully recovered, the common council shall provide medical benefits that are necessary until the police officer or firefighter is no longer in need of medical care.

(f) Nothing in this section affects the rights and liabilities of employees and employers had by them prior to April 1, 1963, under this chapter.

SECTION 10. IC 22-3-7-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 15. In ~~all~~ cases of the death of an employee from an occupational disease arising out of and in the course of the employee's employment under ~~such~~ circumstances that the employee would have been entitled to compensation if death had not resulted, the employer shall pay the burial expenses of ~~such the~~ employee, not exceeding ~~six~~ **seven** thousand **five hundred** dollars ~~(\$6,000)~~ **(\$7,500)**."

Page 44, between lines 28 and 29, begin a new paragraph and insert:

"SECTION 14. IC 22-3-7-27 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 27. (a) If the employer and the employee or the employee's dependents disagree in regard to the compensation payable under this chapter, or, if they have reached such an agreement, which has been signed by them, filed with and approved by the worker's compensation board, and afterward disagree as to the continuance of payments under such agreement, or as to the period for which payments shall be made, or as to the amount to be paid, because of a change in conditions since the making of such agreement, either party may then make an application to the board for the determination of the matters in dispute. When compensation which is payable in accordance with an award or by agreement approved by the board is ordered paid in a lump sum by the board, no review shall be had as in this subsection mentioned.

(b) The application making claim for compensation filed with the worker's compensation board shall state the following:

- (1) The approximate date of the last day of the last exposure and the approximate date of the disablement.
- (2) The general nature and character of the illness or disease claimed.
- (3) The name and address of the employer by whom employed on the last day of the last exposure, and if employed by any other employer after such last exposure and before disablement, the

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name and address of such other employer or employers.

(4) In case of death, the date and place of death.

(5) Amendments to applications making claim for compensation which relate to the same disablement or disablement resulting in death originally claimed upon may be allowed by the board in its discretion, and, in the exercise of such discretion, it may, in proper cases, order a trial de novo. Such amendment shall relate back to the date of the filing of the original application so amended.

(c) Upon the filing of such application, the board shall set the date of hearing, which shall be as early as practicable, and shall notify the parties, in the manner prescribed by the board, of the time and place of hearing. The hearing of all claims for compensation on account of occupational disease shall be held in the county in which the last exposure occurred or in any adjoining county, except when the parties consent to a hearing elsewhere. Claims assigned to an individual board member that are considered to be of an emergency nature by that board member, may be heard in any county within the board member's jurisdiction.

(d) The board by any or all of its members shall hear the parties at issue, their representatives, and witnesses, and shall determine the dispute in a summary manner. The award shall be filed with the record of proceedings, and a copy thereof shall immediately be sent by registered mail to each of the parties in dispute.

(e) If an application for review is made to the board within thirty (30) days from the date of the award made by less than all the members, the full board, if the first hearing was not held before the full board, shall review the evidence, or, if deemed advisable, hear the parties at issue, their representatives, and witnesses as soon as practicable, and shall make an award and file the same with the finding of the facts on which it is based and send a copy thereof to each of the parties in dispute, in like manner as specified in subsection (d).

(f) An award of the board by less than all of the members as provided in this section, if not reviewed as provided in this section, shall be final and conclusive. An award by the full board shall be conclusive and binding unless either party to the dispute, within thirty (30) days after receiving a copy of such award, appeals to the court of appeals under the same terms and conditions as govern appeals in ordinary civil actions. The court of appeals shall have jurisdiction to review all questions of law and of fact. The board, of its own motion, may certify questions of law to the court of appeals for its decision and determination. An assignment of errors that the award of the full board

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is contrary to law shall be sufficient to present both the sufficiency of the facts found to sustain the award and the sufficiency of the evidence to sustain the finding of facts. All such appeals and certified questions of law shall be submitted upon the date filed in the court of appeals, shall be advanced upon the docket of the court, and shall be determined at the earliest practicable date, without any extensions of time for filing briefs. An award of the full board affirmed on appeal, by the employer, shall be increased thereby five percent (5%), and by order of the court may be increased ten percent (10%).

(g) Upon order of the worker's compensation board made after five (5) days notice is given to the opposite party, any party in interest may file in the circuit or superior court of the county in which the disablement occurred a certified copy of the memorandum of agreement, approved by the board, or of an order or decision of the board, or of an award of the full board unappealed from, or of an award of the full board affirmed upon an appeal, whereupon the court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect and all proceedings in relation thereto shall thereafter be the same as though such judgment has been rendered in a suit duly heard and determined by the court. Any such judgment of such circuit or superior court, unappealed from or affirmed on appeal or modified in obedience to the mandate of the court of appeals, shall be modified to conform to any decision of the industrial board ending, diminishing, or increasing any weekly payment under the provisions of subsection (i) upon the presentation to it of a certified copy of such decision.

(h) In all proceedings before the worker's compensation board or in a court under the compensation provisions of this chapter, the costs shall be awarded and taxed as provided by law in ordinary civil actions in the circuit court.

(i) The power and jurisdiction of the worker's compensation board over each case shall be continuing, and, from time to time, it may, upon its own motion or upon the application of either party on account of a change in conditions, make such modification or change in the award ending, lessening, continuing, or extending the payments previously awarded, either by agreement or upon hearing, as it may deem just, subject to the maximum and minimum provided for in this chapter. When compensation which is payable in accordance with an award or settlement contract approved by the board is ordered paid in a lump sum by the board, no review shall be had as in this subsection mentioned. Upon making any such change, the board shall immediately send to each of the parties a copy of the modified award. No such

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modification shall affect the previous award as to any money paid thereunder. The board shall not make any such modification upon its own motion, nor shall any application therefor be filed by either party after the expiration of two (2) years from the **latest of the following:**

**(1) The last day for which compensation was paid under the original award made either by agreement or upon hearing, except that applications for increased permanent partial impairment are barred unless filed within one (1) year from the last day for which compensation was paid for:**

**(A) temporary total disability;**

**(B) permanent partial impairment; or**

**(C) permanent total disability.**

**(2) The date of an award for:**

**(A) temporary total disability;**

**(B) permanent partial impairment; or**

**(C) permanent total disability.**

**(3) The last day that medical services under section 17 of this chapter were provided to the employee.**

The board may at any time correct any clerical error in any finding or award.

(j) The board or any member thereof may, upon the application of either party or upon its own motion, appoint a disinterested and duly qualified physician or surgeon to make any necessary medical examination of the employee and to testify in respect thereto. Such physician or surgeon shall be allowed traveling expenses and a reasonable fee, to be fixed by the board. The fees and expenses of such physician or surgeon shall be paid by the state only on special order of the board or a member thereof.

(k) The board or any member thereof may, upon the application of either party or upon its own motion, appoint a disinterested and duly qualified industrial hygienist, industrial engineer, industrial physician, or chemist to make any necessary investigation of the occupation in which the employee alleges that he was last exposed to the hazards of the occupational disease claimed upon, and testify with respect to the occupational disease health hazards found by such person or persons to exist in such occupation. Such person or persons shall be allowed traveling expenses and a reasonable fee, to be fixed by the board. The fees and expenses of such persons shall be paid by the state, only on special order of the board or a member thereof.

(l) Whenever any claimant misconceives the claimant's remedy and files an application for adjustment of a claim under IC 22-3-2 through IC 22-3-6 and it is subsequently discovered, at any time before the final

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disposition of such cause, that the claim for injury or death which was the basis for such application should properly have been made under the provisions of this chapter, then the application so filed under IC 22-3-2 through IC 22-3-6 may be amended in form or substance or both to assert a claim for such disability or death under the provisions of this chapter, and it shall be deemed to have been so filed as amended on the date of the original filing thereof, and such compensation may be awarded as is warranted by the whole evidence pursuant to the provisions of this chapter. When such amendment is submitted, further or additional evidence may be heard by the worker's compensation board when deemed necessary. Nothing in this section contained shall be construed to be or permit a waiver of any of the provisions of this chapter with reference to notice or time for filing a claim, but notice of filing of a claim, if given or done, shall be deemed to be a notice or filing of a claim under the provisions of this chapter if given or done within the time required in this chapter."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1536 as introduced.)

TORR, Chair

Committee Vote: yeas 7, nays 5.

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